United States Court of Appeals

for the Second Circuit

APPELLEE'S APPENDIX

75-2005

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-2005

	Nos.
PAUL J. CARDAROPOLI,	75-2005
JOSEPH MAIDA,	75-2015
MAURICE H. BARSKY,	75-2023
LOUIS C. PISELLI,	75-2024
WILLIAM SILVERMAN,	75-2025
HOWARD SILVERMAN,	75-2026
NICHOLAS LASORSA,	75-2033

Petitioners-Appellees,

-v.-

JOHN J. NORTON, Warden, Federal Correctional Institution, Danbury, Connecticut, et al.,

Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

APPELLEES' SEPARATE APPENDIX

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

CATALANO, et al.,

- versus -

UNITED STATES OF AMERICA

Civil Action

No. B-883

- -x

United States Court House
New Haven, Connecticut
April 30, 1974

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

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THE COURT: In the matter of Catalano versus the Warden and others, B-833, are the parties ready?

MR. MAXWELL: Yes, your Honor.

THE COURT: Perhaps the record should at the outset contain certain comments by the Court.

For several months, this Court has had numerous complaints concerning the designation "special case" on their files at the Danbury Prison. None of the petitioners seeking relief were able to enlighten the Court with respect to the facts or law concerning this designation. The Court did have some contact with the special case or organized crime decision in its Massiello hearing, and that decision is set forth in 364 Federal Supp 1133.

At that hearing, the government conceded that the designation "organized crime" or "special case" did, indeed, have a significant effect on certain privileges, and perhaps rights, extended to the general population at Danbury.

How, during that hearing, and I suppose in view of the government's concession, there was no in-depth consideration by this Court of the circumstances under which a special case designation was put on a file or the effects thereof.

When the Court received these numerous complaints filed, as I stated, by prisoners who just didn't enlighten the Court so that I could look into the matter comprehensively and render a reasoned opinion, I imposed upon Attorney Dennis

Curtis and Professor Stephen Wizner of Yale to take hold of these cases, coordinate them, consolidate them and prepare the case for a full hearing.

Attorneys Curtis and Wizner graciously accepted the assignment and proceeded to establish a record upon which the Court might make an enlightened decision.

There have been several meetings in chambers with the Court, and we're now at the stage where testimonial evidence is necessary.

Now, in view of the fact that we have had these in chambers conferences, at which time counsel did set forth various positions, I thought it might be wise this morning if we started with an opening statement from each of the attorneys, perhaps to set forth their views, and also to provide a general outline for the Court upon which the testimony evidence will be focused.

Would you be willing to do so, Mr. Maxwell, or perhaps, Mr. Curtis? You have the burden of proof here. And maybe Mr. Maxwell can respond, and at least we'll have a foundation upon which we can hear the evidence.

Now, I don't need an elaborate statement, just a brief, concise statement of the issues, and how each of the attorneys view the issues.

MR. WIZNER: Wizner, W-i-z-n-e-r. Your Honor will recall that he also appointed Robert Davis, a law student, intern in

this case. Mr. Davis has spent many hours preparing the case, and we would like to defer to him to make a brief opening statement.

THE COURT: By all mean, I'll hear Mr. Davis in a brief proffer of your evidence and position.

MR. DAVIS: Your Honor, this is a habeas corpus action brought by inmates at the Danbury Correctional Institution, challenging the use of the designation "special case".

Briefly, the challenge is that the designation is made without notice to the inmates who become the subject of it. That the evidence on which the designation is based is never revealed to them, that they're not given an opportunity to respond to the evidence. That despite the Court's ruling in Massiello, the special case classification is, at least as to our petitioners, nothing more than a synonym for an allegation of organized crime membership and, again briefly, as to harm, we would allege -- we will argue and present evidence that an application for such correctional program such as furloughs, community work programs, halfway house transfers and consideration for parole, the designation "special case" results both in a delay of consideration and apparently in a denial of consideration.

THE COURT: Well, I assume, Mr. Davis, you have researched this thoroughly, as Professor Wizner's indicated, and I do recall your taking a very active part in chambers. From your research, where do you find the authorization for

marking an inmate's file with a special case designation?

MR. DAVIS: Your Honor, the answer to that question seems to be unclear. There is a Bureau of Prison's policy statement, for example, on the subject of delegation of transfer authority which provides -- which I would -- perhaps at this time we could have it marked for identification and admitted into the record. That permits marking folders for some purposes, but it's not clear that those purposes are applicable to our clients.

THE COURT: In that regulation -- and, of course, it will be marked in as evidence -- is the phrase "organized crime" used? And if so, is it defined?

MR. DAVIS: In this regulation which -- copy we have is dated October 15th, 1973. On Page 5, Paragraph 6-M, quote: "When it becomes necessary to separate individuals due to codefendant animosity, cooperation with government officials, or to keep potentially serious escape risks apart," end of quote, stamping of files for review is authorized.

Nowhere in that particular paragraph is any phrase relating to -- large scale organized criminal activity used.

THE COURT: In your research, have you come across the phrase "organized crime" with respect to a designation by the warden, authorized officials, to classify a prisoner as one in organized crime?

MR. DAVIS: The only place where I have seen the phrase

used is in another Bureau of Prison's policy statement on the subject of furloughs, which states generally that prisoners who are believed to have been active in large-scale organized prison -- criminal activity, will, as a general matter, not be granted furloughs.

THE COURT: And your research indicates that that is the only place the phrase is used with respect to the Bureau of Prisons or any other prison rules or regulations?

MR. DAVIS: I believe those are the only ones I found, and I think there are no additions made to that list in the answers to the interrogatories supplied by the government.

THE COURT: And have you found a definition of the words "organized crime" and "organized criminal activity", other than in the Singleton case and Massiello case, and I guess there's a case or two --

MR. DAVIS: The only other thing which is at all close, your Honor, is in, I believe, what is popularly known as the Organized Crime Control Act, but that, as far as I know, has no bearing on this case.

THE COURT: Now, you have made the allegation that the special case designation is placed on a file without notice to the prisoner?

MR. DAVIS: Certainly without prior notice, and any subsequent notice would seem to us to be sporadic and accidental.

THE COURT: And it is your claim that the designation

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in and of itself places the petitioner, or prisoner, in a specia category at the prison which has the effect of depriving him of privileges and rights granted to others who do not have this designation, is that fair to say?

MR. DAVIS: At leasthalf of the position, it also would appear that the conclusory allegations on which an organized crima membership charge is based also have -- it is difficult to tell whether the effect they have is independent or part of the effect that the labor "special case" itself has.

Thank you.

THE COURT: Mr. Maxwell, would you like to reply?

MR. MAXWELL: Yes, your Honor.

Your Honor, at the outset, I would like to file the government's motion to dismiss certain petitioners from this acci based primarily on some housekeeping, and I would file it at this time.

In it, the government moves to dismiss Michael Catalano, who in the initial order to show cause, was the first named petitioner. Mr. Catalano was, in fact, released from federal custody by the time the order to show cause was signed.

We would also move to dismiss petitioner Louis Gazzola. Petitioner Gazzola was a -- became a petitioner through the motion of the plaintiffs to add him as a coplaintiff. Petitioner Gazzola is no longer in custody, he was released in late March or early April of 1974, and his file was never stamped

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"special case", and he was not on the special offender list.

I have been advised by Mr. Curtis that petitioner Charles Stein no longer wishes to participate in this action. For that reason, we would request that the case be dismissed as to him. While he is not mentioned in the petition in the government's motion, I just learned of it this morning, but the government would move to dismiss petitioner John Ianelli, and I will file a written motion to that effect. Petitioner John Ianelli is no longer in federal custody. He was released from federal custody, I believe it was during the early part of April, 1974. He had previously been transferred from Danbury to the Community Treatment Facility in New York. The court file contains an order allowing this transfer to take effect.

The government, as to those -- as to those petitioners, it is my understanding that the attorneys for the petitioners do not have any objection to their -- the cases being dismissed as to them.

The other petitioner who I have moved to dismiss is petitioner Donald Fontana, and the reason for that is that Donald Fontana was initially contained on the special offender list, and his file did bear the stamp "special case". Since the onset of the proceedings in court here, petitioner Fontana was removed from the special offender list and his -- by order of the Bureau of Prisons, and the letter from the Bureau of Prisons directed the institution at Danbury to remove the -- to

cross out the special case stamp and remove it from his institu
tional file, and this has been accomplished.

Now, any claims that the -- that petitioner Fontana have with regard to parole, he is presently pursuing administratively, and the representatives of petitioner Fontana have been in contact with the parole board, and they have made a request for a new parole hearing. I don't have any direct knowledge as to whether or not that has been accomplished at this time, whether there's been a decision in that area, but I bring that before the Court as a reason for some housekeeping at this time.

The government in this -- in its opening statement wo indicate that in this area here, each and every one of the petitioners who are presently in court, with the exception of Mr. Fontana, they -- and that would be Mr. Ingoglia and Mr. Catalano -- their files at the institution do have the stamp "special case", and they are maintained on the special offender list.

The file stamped "special case" states that this inmate may not be transferred without prior Bureau authority, Policy Statement 7300.13(a), Page 5, 51.

In this area here, it is uncontested that these two petitioners do have this stamp on their file.

The designation and the stamp are made without notice to the petitioner, and the designation is made by the officials

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at the institution upon the inmate's arrival at the institution reviewing the various files and documents that accompany each and every inmate to a federal correctional institution, which would be the commitment order, the presentence investigation, various other reports, possibly a letter of a judge, a letter of the United States Attorney, a letter of the United States Marshal, which frequently do accompany a petitioner to a correctional facility.

Based upon a review of those types of documents, an inmate would then be placed on the special offender list. From there, Washington would be notified and the Correctional Services branch at Washington would then make the ultimate determination as to whether or not this prisoner would be kept on this list.

A petitioner does have an opportunity to challenge being placed on this list, and that is through the use of prisoners' mail box, or the common way now which the Danbury institutes, where a petitioner, wherehe has a grievance, he may file a request with the warden or associate warden claiming a grievance, there's an order to respond by the warden or the associate warden in a certain period of time. If there is an unsatisfactory result there, then the inmate can, in fact, write directly to the chairman of the -- well, the head of the Bureau of Prisons in Washington, and I think this Court is aware that in one particular case an individual was designated

a special case, and he did pursue an administrative remedy, and after a review of it, the special case designation was removed from his file, I believe that was a Mr. Sanangelo, it was an individual who had been convicted of counterfeiting.

So that the government would suggest that this is something that can, in fact, be removed from an inmate's file should the appropriate circumstances arise. It is also a circumstance -- an effect which is not static. A person could be an inmate for a number of years and be placed on the special offender list and have special case placed on his file for certain circumstances, which may arise during a period of his incarceration. The same effect during his incarceration, this stamp could be removed depending on the various changing circumstances.

As in the government's response, the government indicat that the reasons why an individual is placed on the special offender list are fairly numerous. There are certain categories of offense, certain class -- and offense itself, and there are also certain categories of defendant which go on the list.

THE COURT: Where do you set it forth?

MR. MAXWELL: That is set forth in the -- the government's response to the interrogatories which we filed, and I believe our date on that letter is -- that is a letter directed to Mr. Curtis, dated March the 8th, 1974, with a copy provided to the Court.

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In Paragraph D on Page 2 of that letter, the paragraph starts off indicating how an individual goes on that list, and what the Bureau of Prisons considers its authority, statutory authority, to place an individual on this list, and then the second paragraph on Page 3 contains the categories of offense or background of the inmate for which one may go on that list.

It is the respondent's position that since the stamp "special case" clearly indicates only the following: that this inmate shall not be transferred without prior authority of the Bureau of Prisons at Washington, that institutional rehabilitative functions are not denied the individual as a result of this classification. That an individual can go on furlough, an individual can go to the Community Treatment Center in New York City. I think Mr. Ianelli is an example of that, who was a petitioner in this case, and who did go to the Community Treatment Center, and that the various other functional programs which the institution maintains are not prevented from taking effect by this designation.

If an individual was to take part in a program, would require a transfer, then a prior approval of the Bureau in Washington would be obtained. But that this authority can be obtained over the telephone by the case manager.

And it would be the government's position that their -- that the petitioners do not suffer adversely as a result of having their file stamped "special case".

And there is also a parole claim which has been brought forward here, and all of the present petitioners were denied parole, and some of them did pursue an administrative remedy claiming their denial of parole, and the government is prepared to submit to the Court an affidavit from the parole board concerning what effect, if any, there is from the designation "special case", and I would file this affidavit at this time.

THE COURT: Well, now, I assume we will have arguments on this later, but I think at the very outset I should ask you point blank whether or not your statement today is a change of position from the government's position in Massiello wherein it was conceded by the government that the classification results in additional restrictions in the prison and adversely effects the chances for early parole?

MR. MAXWELL: Well, your Honor, at least as to these petitioners, that would be the government's claim. My understanding of the situation in Massiello was that that was a habeas corpus action based on the denial of parole to Mr. Massiello when he was denied parole on the basis of supposed organized crime links.

THE COURT: Now, the authority for the various categories which would lead one to put a special offender category on a prisoner's file is, according to you, founded in 18 United States Code, 4042?

MR. MAXWELL: That's correct, your Honor.

THE COURT: How about that regulation referred to by Mr. Davis?

MR. MAXWELL: May I see the regulation?

Your Honor, the regulation that Mr. Davis was referring to is -- the stamp is -- is the effect of that regulation. That is, the policy statement which contains that stamp is also indicated on Page 2 of our response, is, in fact, that -- from that policy statement, and that this is the -- more or less the Bureau statement on transfers of prisoners.

THE COURT: But that is separate and distinct from the special offender list category set forth in your answers to interrogatories, is it not?

MR. MAXWELL: Yes, it is, your Honor.

THE COURT: Now, where is the special offender designation placed on the file? At the prison or at the Bureau of Prisons in Washington?

MR. MAXWELL: It would be at -- it would -- what takes place is that the case manager would initially upon his review of the documents concerning the inmate send a designation to the head of that -- the case managers at Danbury who would in turn refer it to Washington. Washington, the case management branch, would then send back a notice to the institution this man is now on the special offender list, place "special case" stamp on his file.

THE COURT: All right. Now, the "special case" stamp

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on a prisoner's file can come about really from two overall sources. One, the regulation; and, two, the authority that you claim comes from 18 United States Code, 4042? Right. So if I picked up a prisoner's file and didn't look in it, both the file and the records would indicate that he was a special offender, and from that, at least from the surface of the file, I could not determine whether the reason he's a special offender, a special case, is because he has a codefendant in another prison and the Bureau of Prisons does not want him transferred to that prison inadvertently, or, whether the reason is because he's a bank robber?

MR. MAXWELL: That is correct. From the stamp in and of iteself, the only thing that would be apparent would be the words: "This inmate may not be transferred without prior prison authority." One would have to review the file itself in order to -- or contact Washington in order to find out the exact reason for this particular inmate being placed on said list.

THE COURT: Now, you have perhaps answered this, but just so the record will be crystal clear, what is the government's position with respect to the practical and actual effects from a special case designation?

MR. MAXWELL: The government's response is that, given an inmate requesting a furlough, should he be within a certain custodial situation, I believe you have to be in minimum custody, all things being equal, the only thing that would prevent

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him going on furlough should he be a special case, would be his case manager seeking approval from Washington. And this, depending upon the instant situation, could or could not be granted. The special case designation would not prevent the individual from going on furlough. Authority from Washington would have to be received for him to go on furlough. But that, in and of itself, would not prevent it. And given the appropriate situation, this can be done telephonically.

THE COURT: Well, it would also affect transfer, too?

MR. MAXWELL: Yes, given a certain inmate making a request to be transferred, say to the -- from the FCI, Danbury to Allenwood Prison Farm. The inmate would submit the request, it would be reviewed at the institution and supposedly granted along at the institution, the Bureau of Prisons in Washington would be notified, and then they could either accede to the request or deny the request, and this could also be done telephonically if a given situation became --

THE COURT: Do I understand you correctly, when you state that it is the government's position, that the special case designation affects furloughs and transfers, but nothing else?

MR. MAXWELL: Furloughs, transfers and the possibility of certain other institutional programs, such as a JC trip or a Yokefellow trip to various religious groups that upon occasion do go out of the institution, also CTC activity, something which

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he would be leaving the institution from. The special case designation would affect that in that Washington would have to authorize this prisoner taking part in this as opposed to authorization on the institutional level being the same for most prisoners.

THE COURT: All right. Then, is it fair to say that it might affect any type of release whereby the prisoner leaves the prison, but does not affect any institutional programs or rights or privileges within the prison?

MR. MAXWELL: I believe that would be correct.

THE COURT: Now, is parole a release from prison?

MR. MAXWELL: That is correct, your Honor. However, the parole is a different category here. The parole board were to grant parole to a prisoner, the special case designation would not prevent him from leaving the institution.

THE COURT: So it's your claim that it has no effect on whether a prisoner is paroled or not?

MR. MAXWELL: Yes. I believe the petitioners' claim is that -- and I hope I'm not putting it unfairly -- but I think their claim is that the parole examiners upon considering an inmate for parole, seeing the special case designation, then will deny parole.

THE COURT: All right. Finally, do we know how many special offender files there are at Danbury, say, in March or February?

PASQUALE CATALANO, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you please state your name and address for the record?

THE WITNESS: Pasquale Catalano. Danbury, FCI, Connecticut.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Mr. Catalano, how long haveyou been at Danbury?

A Approximately eighteen months.

Q And you are serving a sentence for three years pursuant to a conviction for interstate transportation of stolen securities?

A Yes.

Q And while at Danbury, did you become aware that you had been made a special case?

A Yes.

Q Would you please tell the Court how you became aware of that?

A Well, around December -- around February, of -- January, February of 1973, I was called into my case worker's office.

Q Who is your case worker?

A Mr. Smithers -- and he told me there seems to be some kind of a conflict, that he had gotten a note or there was some

kind of a note up front that we were going to kill a witness. When I say "we", I mean my codefendant, Mr. Ingoglia. And he was going to place me on the special case list. However, he said, "I'm a little confused about it, I want to find out."

So about two or three days later I went back in to find out what had happened. So he didn't want to discuss any more about this note that he had mentioned. However, he said, "I am putting you on the special case list."

I said, "Well, what do you want to do this to me and my family for?"

He then in turn says to me, "Well, from your file," he says, "it's -- it's not me that's doing it." He says, "It's your file. The attorney -- no -- your probation officer is the one thatput you on it."

So I said, "I can't understand it." I says, "This wasn't mentionsd to me."

He says, "Well, this is"-- another thing he says, "You also associate and stay with an inmate by the name of Henry Uvino."

Which I'm -- which -- "That's the only people that I can associated with at the time," I told him.

So he says to me, "Well," he says, "I'm putting it in for you."

Q Excuse me. He said that he was putting it in for you?

A That he was putting it in. He said, "I'm requesting that you become a special case."

So time went by. He called me back again, he told me -- he says, "You have been placed on the special case list."

And again I says, "Why did you do this to me?"

He in turn says, "I am not doing it to you, it's in your file," he said.

I said, "Well, who put this in my file?"

"The probation officer."

Q Did you ever ask him what it was in your file which led him to think that the designation was necessary?

A At this time I did, but he says that's not -- he says, "You would have to go through the courts to get that kind of information."

So I says, "Who did it?"

Again he repeated, "Your probation officer."

Well, by that time, I turned around, I got in touch with my family, I had them go see Mr. Luciano.

Q Who is Mr. Luciano?

A The probation officer.

Q In New York?

A In New York. He in turn told my family that he never requested me to be a special case. He never knew that I was even a special case. That the task force or nothing in New York

was ever involved in any part of my case from what he knows.

So now my family came and told me this information. I went in, I asked Mr. Smithers -- I says, "You told me the probation officer is the one that made me a special case."

So he says, "Oh, did I?" He says, "It must have been the attorney general, then."

I says, "Well, how can I get to see this file?"

He says, "Take it to court."

So I got in touch with my lawyers. I asked them to speak to the attorney general, which they did, they implied -- came back to me and told me that he known nothing of me being a special case and he never requested me to be a special case.

Now, I went back in to see Mr.Smithers again, I went in, I says to him, "Now, listen, Mr. Smithers, you told me once it was my probation officer. You told me the second time it was the attorney general. Now, I had them both checked out and neither one of them say I am a special case and they don't even have any reason why I should be a special case."

He said, "Well, it's in your file."

I said, "That's all you keep telling me: in my file, in my file. What's in my file?"

So with that, he was a little disturbed, he pulled out my file, he says, "Over here."

I says, "Can I read it?"

He says, "No," in which he read -- he said, "We've taken theassumption from your file that it states that you know the Gallo brothers from an alleged police blotter in New York City."

And I said, "That makes me a special case?"

Q Did he tell you anything more about it?

A No. At that time it dropped, and I couldn't do no more about it until new remedies came in.

Q Did you at any time -- any time near this time talk ith wany other rembers of the prison staff about the special case?

A No.

Q Did you take any steps to have the designation removed?

A Not until I had to take it to court, which was in September, and at that time, they came up with the new remedy, because we didn't have that administration remedies Mr. Maxwell mentioned.

Q What did you do to get -- to have it removed?

A What did I -- I went to -- I put a brief in. A show cause.

Q Did you do anything administratively within the Bureau -- within the prison?

A Yes, I filled out the administration remedy to -- the administration, first, which I applied.

Q Excuse me.

MR. DAVIS: Your Honor, may we have this marked as Petitioner's Exhibit for Identification?

THE COURT: Yes.

A Actually, I didn't start that until after I went -- I started that after -- that first originally came out only in September, and I was notified -- August or September, anyway -- and I wasn'tnotified until the parole board -- that's when I start taking my action.

Q Mr. Catalano, I show you Petitioner's Exhibit for Identification No. 1, and ask you if you know what it is?

A It's administration remedy, yes.

Q Does your signature appear on it anywhere?

A Right here.

MR. DAVIS: We'd like to offer that in evidence, your Honor. He has no objection.

THE COURT: There being no objection, it may be marked as a full exhibit.

(Petitioner's Exhibit 1 was received in evidence.)

Q Mr. Catalano, when did you file your appeal in the institution?

A November 6, 1973. First remedy.

Q Did you get an answer -- what was -- you asked for when you filed your appeal?

A I asked for several things: A, wish to confirm that I

was a special case or a special offender; B, I wish to have a special case and special offender removed from my file; C, am I eligible for Halfway House, furloughs, emergency or otherwise. Outside ground maintenance details as long as I am a special case. 4, work release; 5, education trips, holiday trips. D, I wish to confirm that the parole board did consider the fact that I am a special case when making their decision.

Q Did you get an answer from the institution?

A Yes, I did.

Q When did you get that answer?

A Their reply was 11/29/73.

Q And what was their answer?

A "You have been designated a special case by the Bureau of Prisons, Central Office, because of information from investigation reflect a probable link with organized crime activities. The designation 'special case' in and of itself does not preclude community program or furloughs, you have participated in one community religious retreat to the Yokefellow group. Question D can be answered by the parole board. Request for removal of special case designation is denied."

Q At any time did anyone in the prison staff tell you anything more about what they meant by organized crime?

A No.

Q Did you appeal further after institutional denial?

A. Yes, I went right into Mr. Smithers' office. In fact, I gave him a copy of it.

THE COURT: Just hold up one second.

You may complete your answer.

A. I went right into Mr. Smithers' office and I showed him this. I says, "It says here that I'm allowed furloughs and what have you."

He says, "Oh, no," he says, "That -- the way it reads there," he says, "it only means it's possible, the individual one

I said, "I don't understand, you tell me to put a request in, I put it in, I follow it, and this is -- and you still tell me I can't have it."

So the next remedy I took was to the Bureau of Prisons, which --

MR. DAVIS: Your Honor, I think the record should reflect at this point that the witness has been answer -- continuing to read from the appeal he filed and the responses he received.

THE COURT: Very well. Go ahead. Then what did you do?

A. I sent -- I sent -- they have -- after you get done with the administration remedies, your Honor, and if you don't like the results, then you can appeal to the Bureau of Prisons, which they have another form which I then put in. But at that tir

I did not send a copy of the one that the prison sent me back, so I in turn -- they sent me back this letter -- the administration remedy from which you filed on December 28, 1973 stipulated in the center of the form that the complete form number BP-DIR-9 must accompany this appeal. "We are returning your appeal form since it is improperly filed without the cited attachment. If you continue to wish to have this appeal filed, you may refile this same form, but include the complete blue form of BP-DIR-9, which was returned to you by the associate warden. Further, the third page of the pink form BP-DIR-10 is to be kept for your own records."

So then I turned around and I sent it out the way they requested it. And they -- on my request at that time, was -- initial request for removal of special case designated was denied. I hereby renew my request that the designated be removed, and the institution staff be instructed to disregard any such designation and that the appellant be treated the same as an inmate who do not have such designation.

Q And what's the date on that appeal, Mr. Catalano?

A 11/28 -- 12/28/73.

Q Did you receive a response?

A Yes, I received a response on March 18th, 1974. "Reliable information pertaining to your -- indicates that you were an active and subsidental participate in organized crime

activities involving the large-scale negotiable of stolen securities. In the fiew of this information, the Bureau of Prisons has placed your case in a special offender category, which in the filings are a variety of cases which propose portional special management of problems. This designation enables closer control of transfer and some other correctional program. But does not affect most correctional programs. The court record supports the designation in your case, and your appeal, therefore, is denied. Eugene N. Barkin, General Counsel."

Q At any time, did anyone -- sorry.

At any time, did anyone explain to you which correctional programs were effected and which were not?

A I was told none of them were. I couldn't go on any of them.

Q You a member of organized crime, Mr. Catalano, whatever that means?

A No, I'm not.

Q The government's responses to our interrogatories suggest that you have connections with the notorious Gallo brother of Brooklyn, and that you have acknowledged acquaintanceship with some of the more notorious elements in Brooklyn. Have you ever worked for the Gallo brothers, Mr. Catalano?

A No, never.

Q I don't suppose you know what they mean by the more

notorious elements in Brooklyn?

A Being in school. In the neighborhood I grew up in.

Q Have you ever had a parole hearing, Mr. Catalano?

A Yes, I did.

Q When was that?

A In September 20th, 1973.

Q Did the parole board come to a decision about whether to grant you parole or not?

A Yes, they did.

Q What was their decision?

A Continued to expiration date.

I'd like to mention the fact, your Honor, that I also was highly recommended for parole, and while I had a preparole hearing with Mr. Smithers, he told me, he says, "I don't think you got too much of a chance because Mr. Ingoglia didn't make it, and, after all, you are a special case."

Q Did you ever have occasion to apply for participation in the Community Work Program?

A Yes, I did.

Q When?

A The last one was about a month ago.

Q The last one? When was -- how many have there been?

A Two.

Q When was the first one?

A Around November.

Q In connection with the first one, then, did you have any conversation with any member of the prison staff about your application?

A Yes, Mr. Smithers.

Q You remember the substance of that conversation?

A He says, "We will -- you -- you won't be able to have this job. First of all, you are on a discipline action, a discipline report, and plus, that you are a special case."

My second one went in, which I wasn't on any disciplin action, I says to him, "Are you going to give me a work release job?"

He says, "What do you want, us to have the cops waiting outside for you?"

Q Who is "he"?

A Mr. Smithers, my case -- my case worker. He says, "What do you want? The cops waiting outside for you?"

Naturally, I was denied.

MR. DAVIS: Your Honor, may we have this marked as Petitioners' Exhibit 2 for Identification, please?

THE COURT: Yes.

A I have also as far as --

MR. MAXWELL: Excuse me, your Honor.

THE COURT: Yes, just one moment.

MR. MAXWELL: I realize this is a court hearing, however, I think that the witness should respond to questions put to him by Mr. Davis instead of -- some of the questions are not responsive -- the answers, rather.

THE WITNESS: You did ask me if I applied.

THE COURT: Hold up. Your lawyer will pick it up. Pick up the question. But he wants to mark an exhibit first.

Go ahead, Mr. Davis, do you want to mark that exhibit?

Q That conversation, Mr. Catalano, was in relation to the denial of the first application or the second one?

A The second one.

Q I show you now what has been marked Petitioner's Exhibit No. 2, and ask if you recognize it?

A Yeah.

Q What is it?

A Denied. That's a form we go through through administration.

THE COURT: For what?

THE WITNESS: For work release.

THE COURT: Work release.

MR. MAXWELL: Your Honor, I have no objection

to this document. However, this document does contain the names of numerous petitioners and evidently some institutional activity with them, and --

THE COURT: Not relevant to these proceedings.

MR. MAXWELL: Not relevant to these proceedings.

THE COURT: Can you stipulate to what it discloses

MR. MAXWELL: Yes. Evidently, down in the lower portion of this Petitioners' Exhibit 2, petitioner Catalano is evidently requested a job change and it says "denied, CWP," there are approximately, I guess, 20 other inmate's names on here who are not petitioners in this action who made some requests. It is possible to just --

THE COURT: Is it dated?

MR. MAXWELL: It's dated 3/14/74, your Honor.

THE COURT: All right. And there's a stipulation that that indicates his request for work release was denied?

MR. MAXWELL: There is an indication the name -- I think we can possibly just circle Mr. Catalano. It might effectively draw the Court's attention to it rather than have the Court --

THE COURT: All right. During a recess, why don't you mark it so I'll be able to pick it up much

easier later?

Q Did you ever discuss your --

MR. DAVIS: Now, that's marked, do you have any objection, Mr. Maxwell?

MR. MAXWELL: No.

MR. DAVIS: We would like to offer it.

THE COURT: It may be marked a full exhibit.

MR. DAVIS: Thank you.

(Petitioners' Exhibit 2 was received in evidence.)

Q With regard to either of your requests for participation inthe Community Work Program, did you talk to any other prison officials outside of your case worker?

A No. Excuse me.

Q Yes.

A What do you mean by other prison officials? Like the officer?

Q Anybody else employed by the prison besides your case worker, associate warden.

A Oh, sure, I spoke to -- the actual man that filled out the application for me.

Q Who is that?

A Mr. Panaciccio.

Q Do you know what his position is?

A He's a correction officer.

Q And did you have a conversation with him about the application?

A Well, I asked him about --"does he have a job opening?"

And he says, "Yeah."

And I says, "Would you -- could you consider hiring me?"

He says, "Of course, just give it to your case worker."

Then I had Mr. Carroneo, I think his name is, fill it out, and he gave -- he highly recommended me for the job.

Q Did you get the job?

A No, special case, I couldn't get it.

Q Did you ever have occasion to apply for a transfer to another correctional institution?

A Yes, I did.

Q When was that?

A Around March of last year.

Q To what institution did you want to go?

A Allenwood.

Q Did you discuss that application with any member of the prison staff?

A My case worker.

Q Mr. Smithers?

A Yes.

Q Do you remember the substance of that conversation?

A He said first that you would have to get your custody changed, and then --

Q You were at that time --

A I was at that time, I believe, medium. He says, "You would have to get your custody changed," and then he says, "You wouldn't be able to go, anyway, because you are a special case."

Q Did you ever get your custody changed?

A Yes, I did.

Q And you are now minimum custody?

A Been over a year.

Q During this last year, did you have occasion to apply for transfer to Allenwood or any other place, again?

A No, I was told no, I couldn't go.

Q Did you ever have occasion to apply for transfer to a halfway house?

A No. I -- I didn't -- I'm not eligible yet, but I have had discussion with the -- upon it with my case worker.

Q You discussed the matter with your case worker?

A Yes, recently.

Q What did he say?

A I'm eligible. In another four or five weeks, I'm

eligible. He tells me, "Well, Mr. Ingoglia didn't get it because of a special case, and I don't think your chances are any different."

Q You are sure that he made reference in that conversatio to Mr. Ingoglia not getting it because he was a special case?

A Special case.

Q Did you have occasion to apply for furloughs at any time?

A Yes, I did.

Q And when was that?

A I applied January 3rd, put it in -- and then I put again February 27th, and I put another one in March the 7th.

Q Starting from the beginning, why did you want to get out on furlough?

A Well, I want a social furlough, I have some problems with one of my sons, I wanted to see his psychiatrist, visit his school.

Q Is your son in school now?

A Yes, he is. I got him in.

Q In connection with your first request, then, did you get -- did any -- did you get the furlough or were you denied?

A Well, the first one, I was denied, because they says - because I was told that the new policy statement wasn't ready ye but as soon as it is, they'll consider -- the administration wil

consider -- give me parole -- giving me a furlough, which they -- they approved me.

Q. Excuse me. Were you told why they wanted to wait for the new policy statement?

A. They said I didn't come under the heading of --

A. You weren't eligible?

A. I wasn't eligible, right.

Q. Did they explain why under the earlier one you were not eligible?

A. No.

Q. What happened -- did you then wait?

A. Well, then, I waited and the policy came in, around February 27th, I therefore put it in immediately and at that -- that week I went in and asked Mr. Smithers if he was putting me up for it, because I had seen several names and mine wasn't one of them that was up there.

He says, "No." He says, "I'm going to put a few other ones in first, and then I'm going to take yours up probably next week."

I says, "I don't think that's fair at all."

So, actually, what he did was -- nobody went up that week, the following week I did go up, and I was approved for it, and then on a Friday it goes before the warden, and so forth, and I was approved there. That was on the 7th, I believe, of

March.

Around the 13th or 14th of March, Mr. Smithers called me into his office and asked me to sign -- to put my initials on a copy -- copies. I said, "What's this?"

Q Copy of what?

A Copies that he was sending out to Washington.

I said, "What's this for?"

He says, "Well, we can't give you a furlough unless Washington okays it."

Q Did you ask him why that was?

A Yes. And he says, "Because of special case."

So he had three copies in his hand. He made photostatic copies. He gave me two.

And I said, "Well, what's the third one?"

He says, "Well, that's a personal -- that's just -- just Bureau."

Then I waited from -- now, this is March the 13th, I waited till April -- April 16th.

Q During that period, did you do anything to try to find out what the status of your request was between the date in March and the date in April?

A I don't quite follow.

Q Did you ask anyone to help you find out what was bein done with your request?

A. Well, I spoke to the AW, Mr. Aguero.

Q. AW?

A. Yes.

Q. Excuse me, AW stands for associate warden?

A. Yes, it does. He told me -- he says, "You are a special case, and the policy statement says no special cases will get furloughs unless it goes through the Bureau of Prisons, so you just have to wait."

So I waited five weeks, and the answer came back.

Q. What was that?

A. Denied.

Q. Were any reasons given you for the denial?

A. Well, I asked for it and I was told that I was denied and I should -- I said, "Well, you knew" -- to my case worker, I says, "What was the answer?"

Their answer was that I can counsel my son in the visiting room. I said, "Do you mean to tell me that the United States government, Washington, would give me an answer like that about my son?"

So he said, "Well, if you want to see it, take me to court."

Q. While you were waiting for an answer from Washington, did you at any time ask any staff member at the prison to call Washington to find out what was happening to your application?

A. Several times.

Q. Did anyone do that for you?

A. No.

Q. Did anyone explain why that was notbeing done for you?

A. Just wouldn't do it.

Q. Has special case designation affected your life at Danbury in any ways other than those you have described?

A. Many ways.

Q. For example?

A. I feel I didn't get parole, for one.

Q. Inside the institution in the way people treat you?

A. Oh, many fellows don't want to associate with me.

Q. The fellows, other inmates?

A. Other inmates, they're afraid they're going to get it the way I got it from associating with another inmate that slept in the next bed to me.

Q. Do you have any medical problems lately?

A. Yes, I have.

Q. Which are related to this special case?

A. Yes.

Q. Will you please explain that?

A. Well, I recently just discovered that I had a rupture, and I went up to -- went up to the hospital and spoke to Doctor Jersak, originally, because our M.D. wasn't -- was out

of town, and he discovered, he told me, "You have a rupture and you should be operated on it."

I says, "Can I haveit done here in Danbury?"

He says, "I see no reason why not, it's a simple operation." He says, "I'll get to talk to Mr. Zarnecki."

So he went to speak to Mr. Zarnecki, and then he told me I should go see him. I went to see Mr. Zarnecki, he told me, "Well, we got to take this operation to Springfield."

I said, "Springfield? I only got like six, seven months left. Why do you have to go three thousand miles for an eight-minute operation, can't you do it in Danbury or let me go under my veterans' administration rights?"

He says, "You are a special case."

And at that time, that was the end of that.

I asked him again the other day, I said, "Have you reconsidered having me go to Danbury for an operation or to a veterans' administration?"

He says, "I can't do that. You are a special case. Don't you understand that?"

MR. DAVIS: Your Honor, when we were questioning about the furlough applications, I neglected to have marked two exhibits. I don't intend to have Mr. Catalano read from them, but I would like to have them introduced.

THE COURT: Show them to Mr. Maxwell.

MR. DAVIS: Can we have them marked --

THE COURT: Show them. Show them to Mr. Maxwell. Maybe he'll agree and we'll save a double marking.

THE WITNESS: Is that the furlough thing?

MR. MAXWELL: Your Honor, I have no objection to the request which was put forth by Mr. Catalano for a furlough.

THE COURT: Okay. Exhibit 3.

MR. MAXWELL: Excuse me, your Honor, I do object, though, to some attachments which are attached thereto I don't believe they're pertinent to the purposes of this hearing. One is a letter from the high school addressed to -- I presume it's Mr. Catalano's wife; another is a letter from -- I believe it's a psycholo concerning Mr. Catalano's son. I have no objection to the request for the furlough, but to the attachment going along with it, I do object to those.

THE COURT: When you requested the furlough, did you put those attachments on it?

THE WITNESS: Yes, your Honor.

THE COURT: Objection is overruled.

MR. DAVIS: And for Exhibit No. 4, Mr. Maxwell? The denial?

MR. MAXWELL: I didn't see it.

(Petitioners' Exhibit 3 was marked in evidence.)

MR. MAXWELL: The government doesn't object to that.

THE COURT: All right. Exhibit 4.

(Petitioner's Exhibit 4 was marked in evidence.)

MR. DAVIS: I have just two more questions.

THE COURT: Maybe they should be marked.

MR. DAVIS: I'm sorry.

Q Two more questions, Mr. Catalano. First, at any time, either before or after you were classified "special case", did anyone tell you what the evidence was which led them to conclude that you were a member of organized crime?

A Yes. Mr. Smithers told me that it came from an alleged police blotter in New York City off the GAllo brothers, that's all.

Q That's all?

A That's it.

Q Okay. Were you ever given any opportunity to challence the claim that you were a member of organized crime or to show somehow that you weren't?

A Never.

MR. DAVIS: I have no further questions, your Honor.

A. Yes.

Q. And when you initially went to the institution, you were in medium custody? You were a medium custody prisoner?

A. No, close custody.

Q. To your understanding, up there is close custody -- wh are the ranges of custody, close, medium, minimum, is that how i goes?

A. Right.

Q. And that certain, shall we say, privileges or activities are available to an inmate depending upon his custody, is that correct?

A. Right.

Q. So that if an individual is in close custody, he can't do certain things that an individual who is medium custody can?

A. Right.

Q. And when you first went to the institution, you were close custody?

A. Right.

Q. And did there come a time when you were medium custody

A. You get classified. It's four to six weeks, everybody gets classified, you automatically -- they decide what you are then.

Q. So you were then classified as medium custody?

A. Right.

Q And then, at the present time, what is your custody?

A Minimum.

Q Now, Mr. Catalano, did you -- have you had any disciplinary infractions up there?

A Oh, of course.

Q And when your conversations with Mr. Smithers and requests for certain -- to attend certain activities, your disciplinary infraction, you had interfered with one of those, did it not?

A One, yes.

Q Now, Mr. Catalano, are you a member of the group called the JC's?

A Yes.

Q And do you participate in JC's activities?

A Yes.

Q And do you have any office in the JC's?

A No. Not any more, but I did.

Q Oh. What did you have?

A I -- what's the name? I gave out pamphlets, I helped them look at the book to pick out movies.

Q Were you the president of the JC's or anything like that at Danbury? An officer in the group?

THE COURT: The court reporter can't pick up a shake of the head.

Q You claim you are ineligible?

A I know I'm not eligible.

MR. MAXWELL: I don't believe I have anything further at this time.

THE COURT: Redirect, if any.

MR. DAVIS: Yes, your Honor, a few questions.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q Mr. Catalano, Mr. Maxwell made reference to a conviction in New York. When was that?

A 1962.

Q So that's approximately 12 years ago?

A Yes.

Q When was the last time you saw Larry Gallo?

A 1960, Sixty -- about 1960, '61, somewhere in that area.

Q How often did you see Larry Gallo in that period? Did you see him every day?

A No.

Q See him every week?

A No. Whenever I bumped into him on the street, just like you bump into a neighbor or something.

Q Did your relationship with Larry Gallo go further than bumping into him on the street and saying hello?

MARIANO INGOGLIA, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you please state your name and address for the record?

THE WITNESS: Mariano Ingoglia. Danbury.

DIRECT EXAMINATION

BY MR. DAVIS:

Q How long have you been at Danbury, Mr. Ingoglia?

A Eighteen months.

Q You are serving a sentence of two and a half years?

A Yes.

Q Conviction of interstate transportation of stolen securities?

A Yes.

Q And you are a codefendant of the petitioner Catalano?

A Yes.

Q While at Danbury, did you ever learn that you had become a special case?

A Yes.

Q Would you please explain how it was that you learned that?

A I was called in by my case worker, Mr. Smithers, and he told me I was being made a special case, and I asked him

why, and he told me that, well, Catalano is a member of the Gal mob and I was convicted with him, so, I'm a member, too.

Q Are you sure that's what he said?

A Yes.

Q And you are not adding to it?

A Yes.

Q When was this conversation with Mr. Smithers -- take place?

A In February.

THE COURT: Of what year?

THE WITNESS: 1973.

Q This is the first occasion on which you had been told you were going to be made a special case?

A Right.

Q In the responses to the interrogatories, the governments seems to have said that you were made a special case -- I'm sorry, that was dated something else. I withdraw that.

Did Mr. Smithers give you any reason in that conversat or in any other conversation for your being a special case besid your association with Mr. Catalano?

A No.

Q So, as far as you know, as far as you have been told, the only reason is that you are a friend of Mr. Catalano and

and he's a member of the Gallo mob?

A Yes.

Q Did you ask to see any --

A Yes.

Q Did he mention any documents, any government reports?

A Yes. He said that was in my presentence report.

Q And did you ask to see the presentence report?

A Yes, I did.

Q Did you see it?

A No.

Q Were you told what was in it?

A No.

Q Were you told the source of what was in it, whether it was a government officer or --

A Well, I was told that I would have to go get a court order if I wanted to see it.

Q So this date, you don't know what's in that report?

A No, sir.

Q Did Mr. Smithers at any time mention your association with other inmates in the compound as a reason for your being as a special case?

A Yes. Henry Uvino, that I met in West Street when I was -- when I came into jail, I slept above him. And when I came to Danbury, I was socializing with a special case.

Q Did you at any time seek to have the designation removed from your files?

A Yes.

Q What did you do?

A I put in a remedy to the associate warden.

Q When was that?

A I don't recall the date.

Q Approximately? What month?

A I don't know offhand the exact date.

Q Was it late last year? Early this year?

A It was -- I believe it was the end of this year, last year.

Q And did you get an answer to your request?

A Yes.

Q What was the answer?

A Denied.

Q What were the reasons?

A Believed to be affiliated with organized crime; there was another reason that I don't know.

Q Did the answer give you any more of an idea of what organized crime referred to?

A No.

Q Have you ever had a parole hearing?

A Yes.

Q When?

A July, 1973.

Q And did the board of parole come to a decision on whether to grant you parole?

A I was given: continued to expiration, seriousness of the crime.

Q Before your parole hearing, did you have a conversation with any member of the prison staff? About the parole?

A Yes.

Q And which involved the discussion of special case?

A Yes.

Q Do you remember that conversation?

A Well, I was -- I was recommended for parole, my case worker, but I was given the idea that being a special case I shouldn't hope on it.

Q Who gave you that idea?

A Mr. Smithers.

Q How did he give you that idea?

A Verbally.

Q Do you remember approximately what he said to you?

A Not the exact words.

Q Did you ever have occasion to apply for transfer to another institution?

A Yes.

Q When was that?

A I applied -- this was verbally, now. I asked to go to Allenwood.

Q And when wasthat?

A I would say about eight, nine months ago.

Q Whom did you ask?

A My case worker.

Q Your case worker is Mr. Smithers?

A Yes.

Q And did you get an answer?

A No. I was turned down for being a special case.

Q Were you turned down in writing?

A No.

Q Who turned you down?

A Well, he said it wouldn't -- I was -- I wasn't material for Allenwood.

Q Do you know whether anybody besides Mr. Smithers was involved in reviewing that application?

A No.

Q Did Mr. Smithers, in telling you that you weren't mater for Allenwood, give you any idea of what that meant?

A Well, I presume that it meant because I was a special case.

Q But aside from your presumption, did he -- did he say

anything more to explain it to you?

A. No.

Q. Did you ever have occasion to apply for transfer to a Halfway House?

A. Yes.

Q. And when was that?

A. February 29th of this year. 1974.

Q. And did you go to the Halfway House?

A. No. I was denied.

Q. Before you were denied, was there -- what was the institutional response when you applied for it?

A. When I applied for it, the institution recommended me.

Q. Did the case worker recommend it?

A. Yes.

Q. Did anyone else -- prison recommend it?

A. Yes, the advisory committee.

Q. And what happened after -- do you know what happened after the advisory committee recommended it?

A. It was pending the Bureau of Prisons' approval.

Q. The Bureau of Prisons in Washington, D.C.?

A. Yes.

Q. And how do you know that?

A. It stated on the application. On the -- the classification sheet.

Q What was stated?

A Approved CTC pending Bureau of Prisons' approval.

Q Do you know whether anything else was sent with your application to the Bureau of Prisons in Washington?

A No.

Q And you got an answer from Washington, I take it, you said?

A Yes.

Q Did you get a written answer?

A Well, I didn't get a written answer, my case worker called me in. He let me read it, and that was it.

Q What was the answer?

A Denied.

Q Were any reasons given?

A Yes, the nature of the crime. The nature of the offense.

Q Does the name Vincent Sabellico mean anything to you?

A Yes.

Q Who is he?

A Codefendant on a case.

Q Do you know where Vincent Sabellico is now?

A Halfway House in New York.

Q And he was convicted, as far as you know, of the same offense of which you were convicted?

A Yes.

Q Did you ever have occasion to apply for a furlough?

A Yes.

Q When was that?

A I applied several times. I believe five times. I started February 9th or 10th, like that, and I never got a direct no or yes yet, and it's April 30th now. I just been kicked around.

Q Who is kicking you around? Did you get an answer from the institution?

A Well, right now, it's in Washington.

Q What happened -- do you know what happened before it was sent to Washington?

A It was approved by the -- my committee. My team.

Q And it was sent -- then, after that --

A Pending approval of Washington.

Q Do you know when it was sent to Washington for approval?

A Not exactly, no.

Q Do you remember when your team at the institution approved it?

A Yes, about two weeks ago.

THE COURT: Do you know whether or not furlough requests go to Washington if the prisoner does not have a special case designation?

THE WITNESS: No, it doesn't go to Washington.

THE COURT: Who decides whether you go on furlough ordinarily?

THE WITNESS: The team. The team and the advisory committee.

THE COURT: What is the team? Tell me about that.

THE WITNESS: The team consists of Mr. Smithers, Mr. LeBlanc and Mr. Spencer. That's our case team. Like I belong to D team.

THE COURT: To your knowledge, are there members who belong to the D team who are given furloughs whose requests did not go to Washington?

THE WITNESS: Yes.

THE COURT: After the team approves it, what is you understanding of where it goes next? Or is that it?

THE WITNESS: When the team approves it, they send it to the advisory committee.

THE COURT: Who is the advisory committee?

THE WITNESS: The advisory committee consists of the associate warden, Mr. Edwards, and I don't know the rest of them. There's five or six.

THE COURT: And if they approve it, then it is final?

THE WITNESS: If you are a special case, it goes

to Washington.

THE COURT: I mean if you are not a special case.

THE WITNESS: You go on furlough.

THE COURT: But if you are a special case, it is your understanding that there's a third tier?

THE WITNESS: Yes.

THE COURT: A third step?

THE WITNESS: Yes.

THE COURT: Is that correct?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. DAVIS: Your Honor, we are prepared to offer the Bureau of Prisons policy statement on inmate furloughs --

THE COURT: All right.

MR. DAVIS: -- at this time.

THE COURT: Show it to Mr. Maxwell.

MR. DAVIS: Shall I have it marked for identification?

THE COURT: Show it to Mr. Maxwell, and if he agrees to it, we'll save a double marking.

MR. MAXWELL: Your Honor, I would object to this, because I am advised by some of the officials from the institution that this is a draft of a policy

statement, but it is not the official policy statement.

THE COURT: Do we have the official one?

MR. DAVIS: Is this the official one?

MR. MAXWELL: Your Honor, I just checked with the officials, and the one that -- second one that Mr. Davis has given me appears to be the one that is the official one, and the one that is in effect. There is some underlining ink and some circling on Page 3 of it, which, as long as it is not linked directly to this case, I have no objection to it.

THE COURT: I will ignore the underlining. It may be marked Exhibit 5.

(Petitioners' Exhibit 5 was marked in evidence.)

BY MR. DAVIS:

Q Mr. Ingoglia, other than the other things you have described, has being a special case at Danbury affected your life in other ways?

A Yes, there are certain people there that don't want to socialize with me, walk away with me, if we hang around with you, we'll be maybe a special case by case workers, also.

Q You a member of organized crime, Mr. Ingoglia?

A No, sir.

Q Do you know the GAllos?

A No, sir.

Q At any time before you were made a special case, did anybody on the prison staff tell you that they were thinking about doing that?

A No, sir.

Q At any time before or after you were made a special case, did anyone connected with the prison tell you what evidence was being used to make you a special case?

A No, sir.

Q Were you at any time given any opportunity by anyone connected with the prison to deny this claim that you were a member of organized crime?

A No, sir.

MR. DAVIS: I have no further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. MAXWELL:

Q Is it fair to say, Mr. Ingoglia --

A Ingoglia, sir.

Q Goglia?

A Ingoglia.

Q Ingoglia?

A Yes.

Q Mr. Ingoglia, is it fair to say that you don't know why you are a special case, is that correct?

DONALD FONTANA, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please state your name and address for the record.

THEWITNESS: Donald Fontana. FCI, Danbury.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Mr. Fontana, how long have you been at Danbury?

A Fourteen months and ten days.

Q On what day did you arrive at that address?

A February 28th.

Q 1973?

A 1973.

Q After being there for a while, did you learn --

THE COURT: What were you there for?

THE WITNESS: Pardon?

THE COURT: What were you there for? What sentence?

THE WITNESS: Two and a half year sentence.

Q And the crime was?

A Possession of stolen goods.

Q Did you learn while being at Danbury thatyou had been made a special case?

A Yes, I did.

MR. DAVIS: May I have this marked as Petitioners' Exhibit for identification?

There's an objection, your Honor, I was going to offer the sentence computation sheet with the "special case" stamp at the bottom.

THE COURT: What's the objection?

MR. MAXWELL: Relevancy, your Honor, there's no claim -- the government has admitted that Mr. Fontana did have the "special case" stamp on his file.

THE COURT: If it is admitted, it is only duplicitous, then. The objection is overruled.

MR. MAXWELL: I'd object on the grounds of it being duplicitous, also, your Honor.

THE COURT: Well, it may lead to evidence. Counsel for the plaintiff wishes to introduce this evidence through a document, and despite your stipulation, he's not forced to go along with the stipulation. So as long as there is no challenge to authenticity, the document is clearly admissible.

Q Mr. Fontana, I show you what has been marked Petitioners' Exhibit No. 6. You recognize it?

A Yes, I do.

Q What is it?

A It's a computation sheet.

Q What's computed on it? Is it your sentance computation sheet?

A Yes.

Q And is there any indication on that that you would be marked as a special case?

A Yes, on the bottom, this black lettering here.

Q And what's down there?

A "Special case" --

Q Okay.

A -- stamped.

Q Thank you.

THE COURT: What was the date of that? I thought that was taken off?

MR. MAXWELL: That was one of my claims, your Honor. That at the present time with regard to this inmate, that -- if --

THE COURT: At the present time, but when was he a special case?

MR. DAVIS: This was dated June 6th, '73.

THE COURT: All right.

MR. MAXWELL: So if the record can indicate that at the present time this is not an authentic document with regard to this individual --

THE COURT: WE will find out. He's on the

stand, take him through it.

Q How did you learn that you had been made a special case, Mr. Fontana?

A Mr. Lefebvre, my case worker, called me in one day.

Q When was that?

A That was back in June of -- either May of June of '73.

Q And what happened when he called you in?

A '73. And he said he received from a government source a letter stating that I was affiliated with organized crime in Northern New Jersey.

Q Did he tell you what that government source was?

A No, he wouldn't tell me.

Q Did he tell youwhat was thought to be the nature of your affiliation with organized crime?

A He wouldn't tell me that, either.

Q Then what happened after he told you that he received that letter?

A Well, I ask him about it, I says how could I have somethingdone about it, and he told me that I could write to Washington.

Q Did he tell you -- excuse me. Did he tell you what he was doing with the letter?

A Yes, he said he was going to stamp me "organized crime".

Q He said -- he said that he was going to stamp you "organized crime"?

A The information that he received.

Q Yes?

A Was good enough for him to stamp me "organized crime". Organized crime.

Q Did he say that he was going to stamp you or he was going to request that the Bureau of Prisons stamp you?

A No, he said he was going to stamp me.

Q Did you see him stamp your file?

A No, not actually. But he said he would put it on.

Q Okay. Did you ask anything about the effects of being a special case? About what that would do to you?

A Yes. And he says that would mean that he would have to -- do all your time, you won't make parole and no furloughs, you know, whatever other things --

Q Are you sure he told you -- he told you that this would be what would happen because you were a special case?

A Yes, he did.

Q Did you ask him how to get --you said you asked him how to get the designation removed?

A Yes.

Q And what did he tellyou?

A He said there's a two-member board in Washington,

or something, that if I would write to them and, you know, ask them people, and then they would send something back to him, that would be the only way I could have it taken off.

Q Did you have any other conversations with your case worker about the designation?

A Yes. The next day I went back to him again, because I couldn't see where he got it from, where he got his information from, and he referred me to Mr. Keys, that was -- he was chief classification and paroles at the time.

Q Did you go to Mr. Keys?

A Yes, I did, and he referred me back to Mr. Lefebvre.

Q Did you go back to Mr. Lefebvre?

A Yes, I did.

Q What happened then?

A The same thing, they gave me a runaround.

Q Did you get any more information?

A Well, the information, he was repeating himself --

Q Okay.

A -- you know, time after time.

Q At this second meeting, did Mr. Lefebvre say anything about his recommendation for your parole?

A Yes, he did.

Q What he say?

A He said I will not make it, I will not make parole.

Q Did he say why you would not make parole?

A Because of the "organized crime" stamped on me.

Q Did he tell you whether he was going to recommend that you be paroled?

A Yes. He said he wouldn't recommend me.

Q Had you had any conversations with Mr. Lefebvre before this in which you discussed whether he would recommend you for parole?

A Yes, I did.

Q And what had he said at those times -- at that time?

A He says maybe he would recommend six months to a year setoff. But then, as soon s he told me about the organized crime part, he says, "You won't make parole."

Q Did you ever discuss your classification as a special case with any other member of the prison staff?

A Just with Mr. Keys.

Q Did you ever try to get the designation removed?

A Yes, I did.

Q Did you ever file an administrative appeal?

A Yes, I did.

MR. DAVIS: Please mark this. There's no objection.

THE CLERK: No objection?

MR. DAVIS: No objection.

THE CLERK: Petitioners' Exhibit No. 7, your Honor.

(Petitioners' Exhibit 6 was marked in evidence.)

Q Do you recognize Petitioners' Exhibit No. 7, Mr. Fontana?

A Yes, I do.

Q What is it?

A It's administrative remedy sheet.

Q Is it one that you filled out?

A Yes, I did.

Q And what was it you were asking to have done?

A To have the special case removed from my file.

Q To whom did you give this form? Was this for the prison or for Washington, D.C.?

A The prison.

Q And did you get an answer from the prison?

A From Mr. Grzegorek, the associate warden.

Q Did you get an answer from the associate warden?

A Yes, I did.

Q Will you read his answer, please?

A "You have been designated a special case by the Bureau of Prison, Central Office -- Office, acting on the recommendations of the chief of classification for all FCI, Danbury. The designation of special case was made because information from

investigation reflects a probable link with organized crime activities. Request for a special case designation removal denied."

Q Are you a member of organized crime, Mr. Fontana?

A No, sir.

Q You know the Gallos?

A No, sir. Only what I read about.

Q Afteryou were denied by the institution, did you appeal further?

A Yes, sir.

Q What did you do?

A We had a -- there was more forms to fill out after that, and then we started a proceeding in depth.

Q Did you ever -- did you ever file -- did you ever appeal through administrative channels to Washington? Another form like this was sent to Washington?

A Yes, yes.

Q Did you ever get an answer from them?

A No, not that I could recall.

Q Did there come a time after you had already had your administrative appeal denied when you learned that the designation had been removed? Did anyone tell you after this that they took the designation off?

A No. Oh, I was called into the office, that was in

February?

Q Yes.

A That it has been removed, Mr. Lefebvre called me down February 14th.

Q And what did he tell you?

A He said he received a letter from the Bureau of Prisons in Washington that I be removed from special case.

Q Did he tell you why you were being removed from special case?

A No, only because he had the letter from --

Q Did he tell you what was in the letter?

A -- Washington. No, he didn't.

Q Did he offer to show you the letter?

A No, he didn't. He said to me, "I don't know if you ever were or what," he said, "but you are off now." He says, "That means you can have your furloughs, the Halfway House and whatever."

Q So it's your testimony that your case worker told you that by removing the special case designation you would now be eligible for Halfway House and other things --

A Yes.

Q -- which you wouldn't have gotten otherwise?

A Right.

Q Okay. Have you ever had a parole hearing?

P A U L E. S M I T H E R S, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you please state your name and address for the record?

THE WITNESS: Paul E. Smithers. 4 Sky Drive, Bethany, Connecticut.

DIRECT EXAMINATION

BY MR. MAXWELL:

Q Mr. Smithers, are you employed?

A Yes, sir.

Q In what capacity?

A I'm a senior case manager for the Federal Correctional Institution, Danbury, Connecticut.

A Would you tell the Court what the case manager does?

A Essentially, the case manager has combined responsibili of acting as chairman of the treatment team, and in general, monotoring and counseling the individuals assigned to his case load.

Q Would you explain what the treatment team is?

A Treatment team consists of three members, each of which are independent of each other, the chairman, as I havementioned, is ths senior case manager. He is with the classifications and parole department. A counselor is assigned to the team, which is under the chief security supervisor. An education member is

THE WITNESS: I'm saying as far as our determination at the institution, it doesn't affect him. We recommended him just as we would recommend anyone else.

THE COURT: You you will admit that if he wasn't SC, he'd be at a Community Treatment Center?

THE WITNESS: This, essentially, I think, is correct.

MR. MAXWELL: I don't have anything further at this time, your Honor.

CROSS EXAMINATION

BY MR. WIZNER:

Q Mr. Smithers, in your considering inmates for a report, is it part of your job to prepare a progress report for the parole board?

A In some cases, yes.

Q How long does that report normally run?

A You mean in length of number of pages?

Q Yes.

A Two or three.

Q If an inmate is a special case, do you call attention to that fact in the progress report?

A It depends on the circumstances under which the progress report is written; it is required that we write a fresh progress report if one has not been made within 90 days on any case that

we refar to the Bureau. So if the progress report was referred to the Bureau for something like a community program's consideration, then we may deal with the special case issue. If it were written simply for parole, it is entiraly possible that it might not be. There's no set determinate.

Q Did you prepare such a report for the parole board for Mr. Ingoglia?

A Yes, I did.

Q And did you call attention to his designation as a special offender in that report?

A I don't recall if the -- if I called attention to that in the one I prepared for the parole board, I do know that I called attention to that in the one I prepared for the Bureau.

Q I see. Now, the one for the parole board, if you did call attention to the fact that he was a special case or on special offenders list, what would be the purpose of that?

A It would be essentially explained in the progress report itself, in other words, if I mention special case in the progress report, I also say in the progress report why. If you are referring to the last progress report I prepared on Mr. Ingoglia, which mentions his designation as a special case, there should be a notation in there that the reason, as I pointed out, is because he's being referred, either that, or in the cover memo, one or the other.

Q Is there any regulation or Bureau of Prisons policy or guideline given to you which instructs you to include that in the progress report, the fact that someone's a special case?

A No. It's a matter of the individual case. In some cases it would be appropriate, in others it would not.

Q So that you did include it in the report of Mr. Ingoglia, why did you do so?

A Well, if I included it in the report to the Bureau, it would be primarily to point out to them that I was referring this individual for a community program. And the reason I was referring him is in the first paragraph of the report. If it were included in a parole report, it might well be because there was another codefendant who was also coming up at another institution, so they might want to insure that their parole grants were equivalent or something like this.

Q Well, let me be more specific. In a parole -- in a progress report dated June the 12th, 1973, which I will show you in a moment, you make two separate references to the fact that Mr. Ingoglia is a special case?

A Right.

Q Perhaps I'll show you this and we can discuss it better.

MR. WIZNER: May I have this marked as an exhibit, even though it's not our case, your Honor?

THE CLERK: Any objection?

MR. WIZNER: Apparently there is no objection. Can I have it marked for identification?

MR. MAXWELL: You can have it marked for identification.

MR. WIZNER: Very well.

THE COURT: What's that, Eric?

THE CLERK: Petitioners' --

MR. WIZNER: This is Petitioner's 8 for Identification.

THE COURT: 8 Petitioners'.

MR. WIZNER: Yes, your Honor, progress report dated June the 12th, 1973.

Q Mr. Smithers, on the first page will you read the sentence in which the words "special case" are mentioned?

A The one underlined?

"This individual is a special case due primarily to the organized nature of the offense, the sophistication that it involved, and the possibility of its connection with organized crime."

Q Now, later on in the report, there is another mention of that, is there not? Referring to Page 3 of the report? Would you please read that sentence?

A "This individual is on the special offenders list, and

his offense seems to involve some rather sophisticated organization. However, he has a limited arrest history and did not encounter difficulties with law enforcement agencies until 1965; while institutionalized he has maintained clear conduct and conformed to staff instruction, it would therefore seem an appropriate time to attempt

The team feels the individual deserves a parole recommendation and accordingly -- and recommends accordingly disregarding the magnitude of the offense."

Q Very well. Now, would you tell me one more time why you make two mentions in this report of the special case designation of Mr. Ingoglia?

A Essentially, it is explained in the first sentence. At least to my mind. I'm pointing out to the parole board that this is an organized offense, and there may be numerous codefendants, so if they're looking for a precedent on the issue of accountability, they can simply look to his codefendants and look at past parole decisions --

Q Basically, what you do in that sentence, you set forth the reasons which initially prompted you to suggest that Mr. Ingoglia be placed on the special offender list?

A Yes.

Q Your suspicion that he might be involved in organized crime and the organized nature of the offense which he committed

And so the purpose was to call that to the attention of the parole board?

A To the parole boardor anyone --

Q Very well.

A -- reading the report, yes.

MR. WIZNER: Your Honor, we'd like to offer this as a full exhibit. I understand that Mr. Maxwell objects.

THE COURT: What's the objection?

MR. MAXWELL: Your Honor, the witness hasn't testified in any way inconsistent with it. There's been no offer of proof as to why this document should be placed in evidence at this time.

THE COURT: Actually, part of it is in evidence. He read from it. What other purpose do you have?

MR. WIZNER: The offer of proof, your Honor, is just to have in the record the fact that this label follows the inmate wherever he goes, even as to custody, even when it comes to the -- a recommenation that he be released on parole, that follows him.

THE COURT: That's already in evidence, and the two parts you want to be in have been read into the record. So I'll sustain the objection on the ground I already have the information.

MR. WIZNER: Thank you, your Honor.

Q Mr. Smithers, do you know, only if you know, what the legal authority is for employing the special case designation procedure?

A Legal authority, the only thing that I'm positive of is what's been referred to here in court.

Q And what is that?

A Is a section of the United States Code.

Q That's the section which requires the attorney general to provide for the safety and care of prisons?

A I assume so.

Q Are there any regulations, guidelines, policies or other written documents which set forth the special case designation policy, because there's nothing really said about it in 40 -- in Federal 18?

A No, I've seen memorandum from time to time dealing with the various aspects, but no clear policy statement, no single policy statement.

Q How does a case worker find out about the special case procedure?

A You mean now, or at the time that I -- I came on the job?

Q At the time you came on the job and now.

A Okay. I was taken under wing by a senior case manager

for approximately four months, and given all the written instructions, including the memoranda to read, and then was simply OJT'ed, on the job training, trained on the job.

Q What happens now when a new case worker comes into the new system, how is he informed of the special case procedure?

A Well, essentially, we have got a very vague situation. The Bureau is attempting to construct a single policy statement on special case designation. It's really a moot point unless we get somebody in the next month or so.

THE COURT: Wait a minute. I don't understand that. What's moot?

THE WITNESS: Well, right now, Judge, a new man coming on could examine the draft of the upcoming policy statement on special designations. Whether or not he would actually have an effective -- a policy statement that was in effect, would depend on whether he came on now, a week from now, a month from now, it's in the process now, but it's subject to change.

Q Mr. Smithers, in the response to our interrogatories furnished by the government, the following statement is made: "The following categories of offenses or background of the inmate are reasons for placing one on the special offender list: state prisoners, Ku Klux Klan, protection cases, organized

crime, threats to the President, labor rackets, narcotics, commercialized car theft, gambling, extortion, prostitution, interference with justice, bribery, fraudulent bankruptcy, conspiracy, bank robbery, threats against the Director of the Bureau of Prisons." Have you ever seen a regulation, a Bureau policy or a memorandum which s[illegible]hat?

A. Not to my knowledge, no.

Q. So that the fact that somebody's involved in commercialized car theft or fraudulent bankruptcy wouldn't immediately trigger in your mind the thought that: perhaps I should consider special case for this inmate?

A. No.

Q. And what I have read you have never heard before?

A. Not that I recall.

Q. To the best of your knowledge?

A. No.

Q. And not seen it in writing?

A. I have seen several different portions of that. But certain items in there are vague, such as Ku Klux Klan.

Q. So there's no one document or memorandum or instruction sheet or training manual which tells you how to handle these special case designations, it is just kind of prison lore among the staff who gets it and who doesn't?

A. This is essentially correct. In cases where there's a

A This is the basic form that an individual puts on the information that would go on his social furlough form.

Q And does thatform contain staff endorsements?

A Mr. Scalzo again indicates --

Q Would you read that endorsement, please?

A "This man has been in my shop 15 months, is not an escape risk, has been in minimum custody over 13 months. This furlough would enhance family relations. This request is a follow-up of three others."

MR. WIZNER: Will the Court indulge me for one moment, please?

Q Mr. Smithers, how many social furloughs is an inmate permitted, say, in a year?

A The eligibility criteria allows one furlough -- institution within each three-month period for an individual who has over six months on his sentence left. For an individual who has less than six months on his sentence, he may receive a furlough once each month.

Q And how long is that furlough for?

A This is dependent upon the request, the nature of the request for the furlough, and the recommendation of the advisory.

Q And what's the minimum length of time that an inmate ha to be away from the institution for it to be characterized as a furlough?

A There is no minimum or maximum.

Q I see.

A Other than I think the Bureau has something like 30 days, but they say normally --

Q So that if someone left the institution for three hours, that might be considerd a furlough?

A The Bureau in their policy statement defines furlough as any unescorted leaving of the institution, I believe.

Q Now, in computing the maximum number of furloughs an inmate is entitled to, would a Yokefellow religious retreat count into that computation?

A I'm not sure I understand your question. In other words, could a man go on a social furlough, come back and the next day go on a Yokefellows furlough, is what you are asking?

Q That's close.

A Yes.

Q You just testified that there is a limit to the number of furloughs that an inmate can have, the limit differs as to whether or not he has less or more than six months to serve, and I was just asking that in computing whether or not someone has reached his maximum number of furloughs, whether you would figure in a religious retreat, such as the Yokefellow retreat.

the first judgment on a special case is made by the case worker?

THE WITNESS: WE review it, yes.

THE COURT: All right.

THE WITNESS: And if we feel that it is appropriate, we fill out the request form and send it to the --

THE COURT: Let's stay on this level now. The file comes in, ordinarily, you review the file, right, is that correct?

THE WITNESS: Right.

THE COURT: And at that point, you make a determination whether a file should be labeled "special case" or not, is that correct?

THE WITNESS: If there's information we feel is appropriate, yes.

THE COURT: You are making a judgment, is that correct?

THE WITNESS: Yes.

THE COURT: All right. So as you sit there -- and I don't want to oversimplify it, I must get in my mind how this system works -- as you sit there, you know you are going to make a determination that may affect the prisoner's stay at Danbury, don't you?

THE WITNESS: Yes, sir.

THE COURT: All right. Now, do you open a book, do you look at a document, do you look at a handbook to determine how, in what categories a man should be placed in a special case, do you do that?

THE WITNESS: No, sir.

THE COURT: All right. So you must make a mental judgment, is that correct?

THE WITNESS: Yes, sir.

THE COURT: Now, you tell me the categories that you would look for in a man's file before you would initiate a special case designation by superior officers. You tell me the categories you use.

THE WITNESS: Anything that would clearly indicate a need for him to be followed from institution to institution. The possibility that he was assaulted at a previous institution, the possibility that his offense was such -- of a tremendous nature as far as notoriety goes, that the Bureau would want to be advised so that they can pass on, if they received questions, clear indications that the offense may well have involved an extremely organized criminal operation, indications that the man may be, for example, a threat to the President, something

like this, where he's clearly assaulted a public o[illegible] in the past. Essentially, these.

If there are other areas, I simply pick up the file and go in and talk to the boss.

THE COURT: Who is the boss?

THE WITNESS: Mr. Edwards is my present boss; on this case we're discussing, it was Mr. William Keys.

THE COURT: Now, how many prisoners at Danbury do you have under special case designation? I believe you said five.

THE WITNESS: On my team.

THE COURT: Right; and how many altogether do you have on your team?

THE WITNESS: Your Honor, I'm not aware of the figure. Mr. Edwards --

THE COURT: Certainly more than five?

THE WITNESS: Right.

THE COURT: Would you say fifty?

THE WITNESS: I would say that was way over. I would say -- well, I believe he has that information available, I'd say in the area of twenty, twenty-five. Out of roughly eight hundred.

THE COURT: Do you look to see, in addition to the categories you mentioned, whether the man has

been found guilty of conspiracy?

THE WITNESS: No, sir.

THE COURT: Bank robbery?

THE WITNESS: No.

THE COURT: Now, let's just take that latter category, bank robbery. A man may very well have been coming off a sentence of about fourteen to fifteen years at Atlanta or Lewisburg before he even gets to Danbury, right?

THE WITNESS: Right.

THE COURT: So that if a man's been convicted of bank robbery fifteen year ago and he's on his way out, to get him acclimated to the community, and because as a practical matter, he's a low security risk, because he's certainly not going to try and escape after spending fifteen years in jail, you don't consider him a special case just because he was a bank robbery, do you?

THE WITNESS: No, sir. If I might comment, Judge, I wouldn't even consider him, had we received him on a twenty-year sentence just starting off, on the bank robbery along, there would have had to have been some brutal assault, somethingthat would attract notoriety.

THE COURT: Now, fraudulent bankruptcy, does that indicate to you someone that needs special attention?

THE WITNESS: Here, again, Judge, you have got to consider the case by casesituation. If we've got fifty million dollars involved, and it's entirely possible that we'll get a man tomorrow, the next day with this sort of thing, international bank manipulations --

THE COURT: But that's more notoriety and the type of crime?

THE WITNESS: Not essentially, I'm saying the offense alone doesn't prompt the designation.

THE COURT: Car theft?

THE WITNESS: Here, again, I have many car thieves, none of them.

THE COURT: Narcotics?

THE WITNESS: Not unless it was an extremely well-organized international operation.

THE COURT: The same with gambling?

THE WITNESS: If there were a clear indication in the presentence report that this was part of an internation or wide-spread national operation, yes. But I have several gamblers with no special case designation.

THE COUPT: And, of course, this wouldpertain to female inmates, prostitution, that's not even a federal crime in and of itself, is it? Well, never mind, you are not connected with females. Well, I know of no federal crime on prostitution. And so forth. Let's see. Interference with justice, do you know what that means?

THE WITNESS: Certainly.

THE COURT: What does it mean?

THE WITNESS: The term is self-explanatory, granted, it is a vague term.

THE COURT: Is there a crime on the federal books called interference with justice?

THE WITNESS: Not to my knowledge.

THE COURT: All right. Now, how about state prisoners, are they automatically put in special case?

THE WITNESS: State prisoners, I havenever had a state prisoner at Danbury.

THE COURT: How about the Ku Klux Klan?

THE WITNESS: I have never had a Ku Klux Klan member, if he was very prominent in the organization, a national leader or subleader, perhaps, yes, but here, again, this would be a consultation with the

Bureau, yes.

THE COURT: How about protection cases? Do you even know what that means, if so, would you enlighten me what is a protection case?

THE WITNESS: Cases that either need to be protected from their codefendants or constitute a threat to a codefendant.

THE COURT: Custody risk, you have already explained that.

THE WITNESS: Escape risk, yes.

THE COURT: And notoriety you have explained.

Now, we come to organized crime, right? And, actually, most of the cases we have had we have heard the term "organized crime" used, you have used it, counsel have used it, right?

THE WITNESS: Right.

THE COURT: Would you define organized crime for me?

THE WITNESS: For the purposes of referral?

THE COURT: Yes.

THE WITNESS: The definition is unclear, even to me, but for thepurposes ofreferral, I use those individuals who in their presentence report there is a clear, unequivocal statement that they either

admitted or were known to participate in organized crime, and if the statement doesn't say "organized crime", if it say "organized offense", or this sort of thing, this is insufficient.

THE COURT: How about organized criminal activity?

THE WITNESS: This is insufficient for an immediate request, I would probably consult with my boss here again.

THE COURT: All right. Now, do I understand that if a presentence report or a U. S. Attorney writes to you and states that the offender is a known member of an organized crime ring, that immediately starts you on your SC determination, is that correct?

THE WITNESS: This has never occurred with my case load, Judge. At the present time, I certainly wouldn't. I would simply -- due to the question of the special case designation, I would go into my boss and say this is what the U. S. Attorney says, what do we do from here?

THE COURT: Well, I thought one of the reasons Mr. Catalano and others were on the SC was primarily because they had an organized crime reference in their

presentence report, or from the U. S. Attorney?

THE WITNESS: That's hte presentence report. The U. S. Attorney, his reference was to the threat to the codefendant.

THE COURT: So is it your testimony that if the designation was merely "organized crime" in the presentence report, you would not put him on special case, is that your testimony?

THE WITNESS: If there was a clear, unequivocal statement that this individual was known by some sort of authority that I could contact, should we need further investigation, I would initiate the request.

If the presentance simply stated something to the effect this individual is known to associated with syndicate members, something like this, no.

THE COURT: John Ianelli was placed on special list as a result of presentence report dated November 1, 1971, Southern District of New York, linking him with organized crime activity. You are telling me whatever case worker recommended special case for him was an error?

THE WITNESS: No, sir. What I'm saying is that case which I handle, if -- if that had been indicated by one of my cases, I would certainly have some

explanation. It's entirely possible that -- I didn't read the letter, I have no idea.

THE COURT: And Donald Fontana's not your --

THE WITNESS: No, sir.

THE COURT: I see. But you are telling me that, at least as far as you are concerned, if the presentence report states this man is a known member of organized crime, that is not enough for you to initiate special case?

THE WITNESS: No, sir. Not unless there was an indication the task force states.

THE COURT: This is all the states, just what I just mentioned?

THE WITNESS: If I received that presentence report today.

THE COURT: Right.

THE WITNESS: I would simply go into my boss and say, "What do we do?"

THE COURT: And who is your boss, again?

THE WITNESS: Mr. Edwards.

THE COURT: All right. Now, I take it, therefore, that if the presentence report says: he possibly is a member of organized crime, that's even weaker, is it not?

THE WITNESS: To me, it's weaker.

THE COURT: Right. And words such as "was a probable member of organized crime," that's even weaker, is that correct?

THE WITNESS: This is a matter of interpretation Judge. I feel, yes.

THE COURT: All right. That's your testimony. If you don't think a statement saying he is a known member of organized crime is not stronger than a statement that says he is possibly or probably a member of organized crime, I can't contradict you, b to me, the former is much stronger than the latter?

THE WITNESS: I agree, Judge, probable is less strong than definite.

THE COURT: And I suppose a statement saying he is associated or he knows or he has had contact with the notorious Gallo brothers in and of itself is even less? Unless the Gallo brothers are identified for you?

THE WITNESS: What we're dealing with here is an isolated statement. I would need to examine the whole presentence.

THE COURT: But if the presentence report had nothing else but those isolated conclusions, is what

I'm driving at, you would not initiate special case based on broad hearsay --

THE WITNESS: No, sir.

THE COURT: -- accusations --

THE WITNESS: -- is that correct? All right.

Now, you have mentioned several times Washington said, the Bureau said, and several times you said: they said, meaning someonein Washington, I just can't follow that. When you say "Washington", do you mean the Bureau of Prisons?

THE WITNESS: Yes, sir.

THE COURT: In Washington?

THE WITNESS: Yes, sir.

THE COURT: Now, is there someone there that you speak with or you write to so that I can clear up what you mean by "they" and "Washington" and the "Bureau". Who would these men be?

THE WITNESS: All right. Our immediate contact in the Bureau case management is Mr. Siccoli. His boss is Mr. J. D. Williams. Our memorandums from the warden concerning these matters are directed to Mr. Williams.

THE COURT: Do you also talk to them on the phone?

THE WITNESS: I have never spoke personally

with Mr. Williams, because our regional coordinator is Mr. Siccoli, I have spoken to him several times.

THE COURT: So ord' --

THE WITNESS: Excuse me. Dave Clark is the present.

THE COURT: -- ordinarily, when you get a denial, therefore, would you say that's based on documentary evidence sent to Washington, rather than on any telephone conversation you have had with them?

THE WITNESS: This is particularly true since we're in the initial phases of our new program, and we don't want to delay their administrative process by phone calls that interrupt them when they're considering cases in more depth.

THE COURT: So I guess this is an appropriate time to ask you: what is the difference between the old furlough policy which was in existence when this suit was brought, and this new furlough policy? What are the major differences?

THE WITNESS: The major differences are the time limit on the furlough and the number of furloughs has been expanded. There are some differences in technical referral. Because the furlough policy was written in anticipation of our regionalization

process, where many of these cases may no longer be referred to Washington.

THE COURT: Tell me about that? Is there a possibility that special case ap' -- special case prisoners whose furlough requests have been approved in the -- on the institutional level by the team and advisory may not go to Washington under the new system?

THE WITNESS: This is entiraly correct. Some of the cases. As a matter of fact, I think that's now effective in the Dallas region. On cases of notoriety. But here, again, to get -- to get a clear understanding, Judge, what I -- I hate to pass the buck, but I suggest you talk to Mr. Edwards.

THE COURT: Well, I intend to when he gets on, but I want to find out what you have to say, because you have the direct contact with the men, and, you know, I'd like to know what you understand about it.

Well, maybe I will save the balance of my questions for your superior. If you explain once more to me how he plays a role with respect to special case designations?

THE WITNESS: First of all, he's a verbal advisor

in cases where there's no -- where there's -- that are not clear-cut; second of all, our requests are forwarded to him. He's got to forward them further on to the Bureau.

THE COURT: And while we're at it, why don't we go right up the line? Initially, in most cases, it starts at the case worker to --

THE WITNESS: The chief classification and parole.

THE COURT: Chief classification officer?

THE WITNESS: To the Bureau, correctional services branch, Mr. Williams' office.

THE COURT: I see. And one last question. Did you ever see any file, regardless of how old it was, or any file that you have worked on personally with a designation on it saying "OC"?

THE WITNESS: No, sir. I havenever seen any file anywhere with the letters "OC" marked on it.

THE COURT: Okay. We will now recess until 10:30 tomorrow morning.

(Court adjourned.)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

CATALANO, et al.,

- versus -

UNITED STATES OF AMERICA

Civil Action

No. B-883

- -x

United States Court House
New Haven, Connecticut
May 1, 1974

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

For the Petitioners:

DENNIS CURTIS, Esq.
STEPHEN WIZNER, Esq.
ROBERT DAVIS, Law Student Intern
Yale Legal Services Organization
127 Wall Street
New Haven, Connecticut

For the Respondent:

THOMAS F. MAXWELL, JR., Asst. U. S. Attorney
Federal Building
915 Lafayette Boulevard
Bridgeport, Connecticut

P A U L L E F E B V R E, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE COURT: Please state your name and address for the record.

THE WITNESS: Paul Lefebvre, case manager at Danbury. I reside at Town and Country Apartments, Woodbury, Connecticut.

DIRECT EXAMINATION

BY MR. MAXWELL:

Q Mr. Lefebvre, I believe you indicated you are a case manager at Danbury?

A Yes, sir.

Q And do you have duties similar to those of Mr. Smithers?

A I do.

Q Were you in court when he testified yesterday?

A Yes, I was.

Q And do you do anything different from what he does?

A Not markedly.

Q Now, calling your attention to Mr. Donald Fontana, are you Mr. Fontana's case manager?

A I am.

Q And have you been his case manager since he arrived at the Danbury Correctional Institution?

A. Yes.

Q. Mr. Lefebvre, do you recall when Mr. Fontana arrived at the institution?

A. Yes, I do.

Q. And when wasthat?

A. I believe around January of 1973.

Q. Did you prepare classification --

A. I did.

Q. -- information on him?

And did you prepare progress reports on him at that time?

A. No. I did not.

Q. When was the first progress report prepared on Mr. Fontana?

A. I don't believe I prepared a progress report on Mr. Fontana as of yet.

Q. Was a report prepared concerning Mr. Fontana that went to the parole board?

A. Yes.

Q. What kind of a report was that?

A. That was a classification summary and a staff evaluation which is routinely done on inmates when they first come into an institution.

Q. And do you know when this was done with regard to Mr.

Fontana?

A He was classified, I believe, in February, and somewheres around the latter part of Rebruary or early March, I belie this classification summary was done up on him.

Q Now, did that classification summary, did that contain a recommendation for or against parole?

A No.

Q And was this the only information that was submitted to the parole examiners by you concerning Mr. Fontana making parole?

A That's correct.

Q And Mr. Fontana, does he have a regular sentence or an A-2 sentence?

A He has a 42-O, A-2 sentence.

Q Now, Mr. Lefebvre, when this classification summary was prepared, was Mr. Fontana designated as a special offender and marked special case at that time?

A No. If memory serves me correctly, the classification summary was prepared before this letter arrived from the investigative source referred to yesterday. That precipitated my action in requesting that he be placed on the list of special offenders.

Q So that the -- now, would you -- would you tell us, I believe you were sitting in court and you heard the Court

indicate that he was interested in the procedure on how somebody became a special case. Referring to Mr. Fontana, would you indicate how this occurred? What procedures were used?

A Well, on the basis -- you mean the authority by which I took the initial action in this case?

Q Well, just everything you did and what was your reason for doing it.

A Okay. On the basis of a report received from the United States Attorney's office, in Newark, New Jersey, I believe, it was alleged that Mr. Fontana was considered to be involved in organized crime activities and on the basis of this, I submitted a request to the chief of classification and parole, who is Mr. William Keys at the time, indicating the authority by which I felt this was a proper action.

I cited my specific authority. I cited specifically why I took this action, and I also added a line to the effect that no specifics were given to support the allegation that he is associated with organized crime activities.

Q By "specifics", what do you mean?

A Well, no actual -- by "specifics" I mean no special circumstances or names were cited, no particular activity on his part was referred to, it was simply a statement by the United States Attorney that this man is felt to be involved in organized crime activities.

Q Would you classify it as a conclusory statement by the United States Attorney?

A Would you define conclusory?

Q It is just a blanket statement we consider him to be?

A Yes.

Q Didn't say with who or anything of that nature?

A No.

Q Now, Mr. Lefebvre, what took place after you -- you sent a recommendation to Mr. Edwards, is that it?

A Mr. Keys?

Q Mr. Keys?

A Yes.

Q Was he in the job Mr. Edwards now holds?

A That's correct.

Q What took place after that?

A Mr. Keys apparently agreed with what I had done inasmuch as he signed the memorandum that was then forwarded to Washington, and upon advice of the central office, Mr. Fontana's file was marked "special case".

Q Now, the Court yesterday was inquiring into what -- how -- what is actually placed on the file physically to indicate that thisperson is in this category.

A I know of only one stamp that -- which reads "special

MR. DAVIS: Excuse me, sir.

THE COURT: Yes?

MR. DAVIS: Could we have these two policy statements on transfer made part of the record?

THE COURT: Oh, yes.

MR. DAVIS: We never did.

THE COURT: I have Exhibit 15, Exhibit 14, they're admitted as full exhibits.

MR. DAVIS: 14 is the furloughs.

THE COURT: Right. 15 is a policy statement of some sort.

MR. DAVIS: 15 would be the delegation of transfer authority from 1971.

THE COURT: Yes.

MR. DAVIS: And 16 would be the current one.

THE COURT: All right.

(Petitioners' Exhibits 15 and 16 were marked in evidence.)

MR. MAXWELL: Nothing further.

THE COURT: I have just a couple of questions, but I want to give the court reporter a rest, so we'll have a short recess.

(Recess taken.)

THE COURT: Mr. Lefebvre, do I summarize your

testimony correctly when I state that it is your opinion that a special case designation has no effect on the institutional level with respect to programs and other rights and privileges among the prisoners?

THE WITNESS: In and of itself, no.

THE COURT: However, you feel it necessary to call the prisoner in when you classify him a special case, do you not? You notify him that he has this on his file?

THE WITNESS: Well --

THE COURT: Well, I mean you do do that?

THE WITNESS: I don't recall having specifically called Mr. Fontana down and saying, "You are now on the special offenders list." I do recall having mentioned it to him, I don't remember whether I initiated this statement or whether he asked me, "What's this stamp doingon my file?" There is no formalized procedure by which I notify a man when he is placed on a special offender list, however, I make no effort to -- to -- well, deny or hide the fact from him if he questions me about it.

THE COURT: Well, he doesn't have access to this file, does he?

THE WITNESS: No, sir, he does not.

THE COURT: Well, then, how would any prisoner know what's in his file unless you showed it to him or mention it to him?

THE WITNESS: Well, as you open the institutional file, as you are often -- as you often do -- my desk is situated like this, Mr. Fontana would be sitting directly to my left here, I'd open his institutional file and right on his face sheet the stamp would appear, it's fairly obviously, and it's fairly recognizable.

THE COURT: Well, is it your testimony, then, that you do not inform the prisoner that he's a special case?

THE WITNESS: I do not.

THE COURT: That, the prisoner learns about it on his own somehow?

THE WITNESS: Yes.

THE COURT: Even by looking overyour shoulder?

THE WITNESS: Yes.

THE COURT: And what was your reply, or what is your reply to a prisoner who states, "What are the consequences of my being a special case"?

THE WITNESS: Well, I simply inform him that in anything involving outside program activity, or a

transfer to another facility, if it's -- if it's appr
at the institutional level, referral is necessary to
the Bureau of Prisons.

THE COURT: Well, then, in effect, it does affect his life in the prison, does it not?

THE WITNESS: To the extent that there's an extra administrative step involved in the time proces perhaps, in -- in the time process involved in handli a request for a given -- for an outside community activity. You know, I wouldn't -- I wouldn't be -- it -- what I'm saying is that, for example, an inmate who is not so designated, if he meets the criteria for a furlough, he would be processed by the team. I the team concurred, it would then go to the advisory committee; if the advisory committee concurred, at that point -- except for -- except for a special -- a few special categories have been made, for example, those who have expressed, or who have a pattern of hostility or violence in their background, in some instances, such as this, we have to refer to the Bureau, too.

But excluding these cases, at that point I would simply prepare the furlough and submit it to the warden for signature.

In the case of a special offender, after the advisory committee rules on it, I would then prepare a memorandum and attach an up-to-date progress report and submit it to the Bureau for their consideration.

THE COURT: Do you alert the prisoner that it may affect the procedures for parole?

THE WITNESS: I didn't know that it would.

THE COURT: Well, don't you know that if a man's a special case, that his case may be referred and is generally referred for an en banc hearing in Washington?

THE WITNESS: In some instances, yes.

THE COURT: You don't alert the prisoner of that?

THE WITNESS: This is generally a decision made by the parole examiners, your Honor. If the particular inmate before the parole examiners is felt to be, say, a high functionary in organized crime organization, they would make the determination as to whether or not he should be referred for en banc consideration.

THE COURT: I understand the words you are saying, but I don't understand their meaning. Now, what's a high functionary in an organized crime activity, are you repeating something you have heard, or do you

use those terms trying to connote something to me, and, if so, what are you trying to connote? What is an organized crime activity? Now, you said it's a crime that involves multifaceted offense, that's -- shows organization and coordination of efforts. Can you think of any crime that involves more than one person that is not within thatdefinition? And if so, please tell me.

THE WITNESS: I will -- I will readily acknowledge, your Honor, that there is, to my mind, room for perhaps a little bit more specific definition of what should be considered under the rubric of organized criminal activity. There is a lot of room for judgment.

Strictly speaking, we could perhaps refer anyone involved in a car theft ting of, say, three individuals, that shows some level of organization and some strategy and some planning before this -- this hypothetical offense took place. Strictlyspeaking, perhaps that could be referred as a -- as an instance of organized criminalactivity.

THE COURT: Does it also --

THE WITNESS: I wouldprobably not, you know -- not refer such an individual.

THE COURT: Well, let's take Mr. Fontana's case. He stole some stuff off a truck?

THE WITNESS: Right.

THE COURT: 76 radios?

THE WITNESS: Right.

THE COURT: And if you had not received this memorandum from the United States Attorney's office, what would there be about that crime that would indicate it's part of organized crime?

THE WITNESS: Nothing that I -- I probably would not havereferred Mr. Fontana had I not received that letter.

THE COURT: Right. Now, while we're on that, will you tell us, what is a report on a convicted prisoner that's filed by a United States Attorney? What is that? Is that a --

THE WITNESS: It's an administrative form that is routinely sent to institutions by the -- I believe the U. S. Attorney who prosecuted the particular case. That's two-sided. On one side there's an outline of what the offense was and what particip' -- you know, the dimensions of this particular offense, codefendants, this man's particular role. On the back side there are categories, was this man of any assistance to the

government.

THE COURT: In your hundred and seventeen cases, for example, how many of those files would you say contain this report?

THE WITNESS: I'd hesitate to even offer a guess, your Honor. Sometimes we receive these reports, sometimes we don't. Probably in half of the cases we don't receive these U. S. Attorney's reports. That's just a very loose guess. There are comments on the other side, as well, relative to -- relative to parole recommendation. We very often receive similar -- similar statements from judges.

THE COURT: Well, I'm aware of a form that's submitted to United States Attorneys and a judge when a man is about to come up for parole, and they forward this form asking the United States Attorney and the judge whether they have any comment?

THE WITNESS: Right.

THE COURT: Is this the form you are referring to, or is this some other form?

THE WITNESS: I know of no specific form that the in -- that the institution or the Bureau would forward to the judge or the U. S. Attorney shortly before a man's to be submitted for parole.

In Mr. Fontana's case, this arrived shortly -- shortly after he was classified at the institution.

MR. MAXWELL: Excuse me, your Honor, if I may, to assist the Court. That form is a form prepared by the United States Attorney and the court, also, the new regulations of the Department of Justice are that there is supposed to be submitted by the United States Attorney on each individual, each defendant who is given a prison sentence and it is to be done as soon thereafter as the person is actually sentenced by the Court. So it does not wait until parole any more. The prison authorities like to have it early. It's -- some U. S. Attorney's offices fill them out religiously, I would assume, others, I would assume, might be somewhat lax, but that is the form you were referring to which normally used to come when a person is going to make parole, now we're supposed to fill them out as soon thereafter as the defendant is sentenced.

THE COURT: And I believe you stated to Fontana that he could appeal his special case designation to someone else?

THE WITNESS: To the centraloffice, yes, sir.

THE COURT: Now, is it understandable for me to

wonder why a man takes an appeal, or should care to take an appeal, or is advised to take an appeal, if it doesn't mean a thing? In other words, if a speci case has no effect in the prison, why are there appellate procedures to remove the special case designation?

THE WITNESS: If Mr. Fontana asked, I believe what the procedure would be in order to have this designation removed, it was my -- my request, which was forwarded to the chief, and then to Washington, was apparently at one time felt to be qualified or appropriate. Once it has been ruled on by Washington and the man has been designated a special case, I inform Mr. Fontana if he chose to contest or wanted to have this thing removed, it would have to be done at that level. I only answered his question as to, you know, what the chain of command or what the administrative channels would be involved if he wanted some recourse with respect to this designation.

THE COURT: Now, I assume that there are some criteria, either in a writing or in your mind, when you consider whether a man should be a special case, is that correct?

THE WITNESS: Uh-huh.

THE COURT: And I think you mentioned something about codefendant animosity?

THE WITNESS: Yes, sir.

THE COURT: And perhaps some type of a custodial risk. Now, are you aware that there's a regulation that defines transfer of special cases? By that I mean, that there is a regulation that addresses itself --

THE WITNESS: To the transfer?

THE COURT: -- to the transfer, is that correct?

THE WITNESS: Yes.

THE COURT: You are aware of that regulation?

THE WITNESS: There's a clause in the transfer authority which is more comprehensive, but does deal specifically with these cases, yes.

THE COURT: All right. But nowhere in that clause is there anything about organized crime, is there, or don't you know?

THE WITNESS: I'm not sure, I believe there -- I believe there is something to the effect of inmates associated with large-scale organized activity -- would be in that clause.

THE COURT: All right. And when you said very early in your testimony that pursuant to authority, that you had formed this judgment, were you referring to

that regulation?

THE WITNESS: No, I was referring to the letter that I had received.

THE COURT: Well, I know, but I mean the letter could have said he had two wives, would that trigger a special case designation? What was there about the words -- phrase "organized crime" that triggered "special case"? That's what I'm trying to find out.

THE WITNESS: The term "organized crime".

THE COURT: I know, but where does it say that if a person is believed to be a member of organized criminal activity or a member of organized crime that his file should be marked "special case"? This i what I'm trying to determine. And I ask you is it in the regulation, and you said it may be, but that isn't the source of your authority, and I'm asking you what is the source?

THE WITNESS: Okay. I'm referring to -- to the memorandum, or it may even havebeen a -- I don't belie it -- I don't believe it was a policy statement or anything that strong -- a memorandum relative to special case designation that I recall having seen which indicated that custody risks or people who had to be protected from codefendants, who would do

harm to others, or people associated with large-scale organized crime, should be placed on a list of special offenders. This is a memorandum, a request sheet, that was referred to in the courtroom thatwe have available to us, that is -- that is part of our training, I guess, when you become a case manager, you become sensitized that there is such a special case designation and some of the criteria for placing people on such a list.

THE COURT: Now, in your training or in your reading, have you ever heard of the following criteria: state prisoners?

THE WITNESS: No.

THE COURT: Ku Klux Klan?

THE WITNESS: Uh-huh.

THE COURT: Protection cases, I assume, yes?

THE WITNESS: I have, yes.

THE COURT: Custody risks?

THE WITNESS: Uh-huh.

THE COURT: Notoriety cases?

THE WITNESS: Uh-huh.

THE COURT: Organized crime?

THE WITNESS: Uh-huh.

THE COURT: Threats to the President?

THE WITNESS: I can't specifically recall, but I think I would automatically do so in a case like that.

THE COURT: If a prisoner came into Danbury and was sentenced because he threatened the President through a letter, you would mark his file "special case"?

THE WITNESS: NO. I'd look into it.

THE COURT: Well, what would you look for? He was convicted.

THE WITNESS: It just seems to me that someone who's been convicted of threatening the life of, you know, the highest office holder in this country, is perhaps, you know -- common sense is all I can argue would dictate that perhaps this bears looking a little further into. I don't remember in any material I had seen or heard through my training to specifically grab anyone who comes in with a special -- threat to the President and proceed to place him on the special offender list.

THE COURT: Extortion?

THE WITNESS: No.

THE COURT: And I don't suppose -- you don't work with females, so prostitution --

THE WITNESS: No.

THE COURT: Interference with justice?

THE WITNESS: No.

THE COUPT: Bribery?

THE WITNESS: Unh-unh.

THE COURT: Fraudulent bankruptcy?

THE WITNESS: Not -- no. The specific nature of that offense would not prompt my taking that action.

THE COURT: Conspiracy?

THE WITNESS: Conspiracy, there's a great many offenses coverad under the term "conspiracy".

THE COURT: Bank robbery?

THE WITNESS: Not in and of itself.

THE COURT: Threats against the Director, Bureau of Prisons?

THE WITNESS: Not in and of itself, no.

THE COURT: Just let me clear up something which I think is self-evident. I have used the word "appeal" because you used it, but is there a written policy statement or any instructions given in writing or any other way to a prisoner who is a special case whereby he can actually file a written appeal or an oral appeal and then be heard, and something like disciplinary hearings, where the man

is accorded the right to come in and be faced with the charges?

THE WITNESS: Right.

THE COURT: Is there anything as formal as that?

THE WITNESS: I could only point to something that's -- that's intended to cover a wider range of complaints, and that's our presently used request for administrative remedy thathas a built-in system whereby you exhaust the institution's remedies and then you have -- you can appeal the matter to the Bureau of Prisons, the central office, and then proceed with the courts.

THE COURT: I have no further questions.

MR. MAXWELL: Nothing further.

THE COURT: You are excused. Thank you.

(Witness excused.)

JEROME A. EDWARDS, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you please state your name and address for the record?

THE WITNESS: Jerome A. Edwards. 212 East Pembroke Road, Danbury, Connecticut.

DIRECT EXAMINATION

BY MR. MAXWELL:

Q Mr. Edwards, are you employed?

A Yes, sir, I am.

Q And by whom?

A By the Federal Correctional Institution, Danbury, Connecticut.

Q And you have a job title?

A Yes, sir, supervisory social worker, chief classification parole.

Q Would you briefly explain to us what those -- what duties of your position are?

A I'm responsible for the classification or the classification -- five classification teams, their social treatment. I'm a member of the adjustment committee, disciplinary board, I'm a member of the advisory committee who advises the warden on transfers and matters of policy statements and institutional organization. As well as in control of the records office and

section.

Q Now, Mr. Edwards, do you also handle requests for medical treatment by prisoners?

A No, sir, I do not.

Q Well, supposing an inmate needs an operation, how is that taken care of?

A He would submit a request for a call out for medical staff, and then -- he would be examined by the medical staff and they would make any recommendation. I suppose he could be made known -- any request he had to the doctor.

In the case of surgery, it would be voluntary, he would volunteer for it, if the doctor felt it wasneeded.

Q So presuming both of those events occurred, and specifically I'm referring to Mr. Catalano, question of a hernia, Mr. Catalano requested an operation, the medical people felt it was surgically necessary, what would take place then?

A Okay. The would first, of course, obtain Mr. Catalano's approval for the operation, it not being an emergency, they would forward -- then it would be referred to my department for transfer to the medical officer for prisoners at Springfield, Missouri, and there he would be transferred to have the operation and do the recuperation.

Q Based on your experience, is the medical facility at Springfield a place where the majority of surgical operation

are performed?

A. Yes, sir.

Q. What about --

A. Only in dire emergency need is it ever done locally.

Q. What about simple operations such as may require a three or four-hour stay in the hospital?

A. That could be done locally. The cost would be considered and what it would cost to transfer a person, there's also air evacuation, movement to Springfield.

Q. Is custody of the prisoner one of the factors on sending a prisoner to Springfield?

A. No.

Q. What I'm talking about is custody of him while he's at the facility, such as a person goes to Danbury Hospital?

A. Oh, I see. Yes, because if he is taken to local hospital, it would require usually one of our staff until a U. S. Marshal could assume custody.

Q. Now, Mr. Edwards, we have had substantial amount of discussion today and yesterday concerning special offender list and the term "special case"; now, I believe the Court is interested in how an inmate becomes a special offender and what takes place from there, and what your function in this procedure is, whether or not you have anything to do with it after a person is on the special offender list, what activities do you

maintain and do you review this? Just all of the factors that come into play in this area, would you explain that?

A To begin at the beginning, when we received an individual, of course, his records that we have, commitment papers, presentence report, is usually reviewed by an intake and screening officer, this is usually a senior case worker who has additional duties.

In the event that he is not able to catch it, I also try to interview each one, such as today I'm not there, and then I would depend upon the case worker to review each record. Basically, we would review the information starting with the details of the offense, which is usually provided in the presentence by probation officer gathered from facts of the U. S. Attorney, court transcripts and other information. We review the complete instant offense, then we review prior record, as well as any comments on his livelihood for the last few years by the probation officer. The form of seven -- 752 -- the U. S. Attorney's form is reviewed for his comments, in addition.

Should there be some indication of a separation of a codefendant or some other reason for placing him on special offender, I make out the form, or the case worker makes out a form which pretty well lays down the facts from which he is making this recommendation. He states whatever authority or

whatever sentence or whatever statement was made in the presentence which would indicate it, after I have reviewed it and either agree or disagree with him, should I agree that perhaps this person should be placed as a special case, I then send it to the associate warden, who reviews it. From the associate warden, it goes to the warden for final approval. It is forwarded to the correctional services branch of the central office, if they concur, then they instruct us to place the special case stamp on the file.

Okay. Then, to go further, of course, we make up a list of these people we have on the special function, we have approximately 30, I try to review --

THE COURT: Excuse me. 30 out of how many?

THE WITNESS: 789.

Q This is at the present time?

A At the present time, yes. And that's an approximate -- I did not count it. If they are, as I say -- ideally, I would like to review 'em each month, I can truthfully say they are reviewed at least bimonthly, if there should be any changes or new information, well, then, we would either make recommendations that he be moved, or there's new information sent, we would even forward that to the central office. This is correctional services, Bureau of Prisons.

If new information is gathered, I put a new paragraph,

new information with the old, it depends on whatever evidence we have.

If there is no new evidence or no change, it's merely submitted by name, but they are reviawed periodically.

This -- I hate to refer to it as list, but these names that we have on this -- on special case, or control, when I review 'em, then I must forward them to the warden for his signature, and, of course, he questions me why such and such is on and why such and such is off. And this is the review

Q Since you have been at the institution, have there been occasions when a person who initially was placed on the list has been removed from the list?

A Yes, sir, it has.

Q And,Mr. Edwards, the situations arise that an inmate may be, say, in the middle of his sentence, when he may be placed on the list?

A That is true.

Q Now -- now. with regard to the categories of offense or background of the inmate, as a reason for placing him on the special offender list, are you familiar with the categories in the background of the inmates that -- reason for placing him on the list?

A Yes, sir.

Q Now, can you tell us -- can youexplain to us why a

CROSS EXAMINATION

BY MR. CURTIS:

Q Mr. Edwards, you sit on the advisory committee?

A Yes, sir.

Q Is anyone marked "special case" without your approval? At the institution?

A No, sir, there's none stamped now without my approval.

Q And if anybody's going to be stamped in the future while you are there, he will have your approval?

A Right.

Q Now, there's only one thing called special case, is that right? You don't -- you don't classify people differently for purposes of furlough, for purposes of transfers? If a person is a special case, he's a special case, is that right?

A Right. I suppose so. All those qualifications we've been over through this last two days, right.

Q And you say that some of those people, you said before, Ithink, that some of those people are designated special case because they're involved in organized crime, is that right?

A Yes.

Q They're about 30 there, 30 special cases altogehter at Danbury?

A Yes, sir, approximately.

Q And how many of those would be classified as organized

crime cases?

A I have no statistics.

Q Now, what -- when did you get to Danbury?

A December the 3rd, 1973.

Q So you don't know of your own knowledge what stamps were used before December 3rd, 1973?

A No, sir.

Q Now, what pieces of paper do you look for for guidance as to how to classify somebody as special case?

A All presentence investigation, of course, is usually finished.

Q I'm sorry. Are there any regulations, memoranda, statutes or other pieces of paper, either put out by the institution or by the Bureau of Prisons or by anybody else, for that matter, that gives you guidance on whom to classify special case?

A No, sir.

Q Do you train the case workers in deciding who is going to be a special case?

A Yes, sir.

Q Do you give them written instructions as to how to do this?

A No, sir.

Q I think that you testified before that you, in some

cases, check with the informants. Could you be more specific to tell me in which cases you would check further to see -- with a record or with a person -- to see whether or not somebody should be classified special case?

A. Could you specifically pinpoint what you want more, a little bit closer?

Q. Yes. Suppose the presentence report said it is rumored that Mr. X has very close contacts with notorious elements in Yonkers.

A. Okay. Providing there was no other information such as other arrests in other situations, yes, we would check, I would contact the United States Probation officer in that district who made the report and state -- and reread the paragraph, ask him for any supporting information he might have or evidence and get his opinion. This would then be added to the Bureau referral.

Q. But what if instead of a sentence like that, you saw a sentence saying Mr. X is connected with notorious elements in Yonkers, what would you do then?

A. I would take that as a pretty positive statement and might use it in total. However, if in interviewing the inmate or the case worker in his interview found that theguy vehemently denied it, we mightcheck, if there's no other evidence of an arrest pattern, as such, we might check, but the statement

being positive could be taken in total.

Q Will you describe for me what -- tell me what modus an inmate would have to make such an objection?

A At the classification interview, the case worker is -- of course, is instructed, and he goes over his prior record and his background, at such times, of course, a case worker does not know whether he's been -- been -- being even considered at that time unless he finds something very definite, then he makes a recommendation, but he would discuss his background, and I am sure that if this was brought to the case worker's attention or he saw it, he would bring it to the resident's attention.

Q But there's nothing in writing --

A No.

Q -- that says for him to do so?

A No.

Q I think you said that you review these files every so often, perhaps as often as once every two months, perhaps as often as once a month, is that right?

A Yes, sir.

Q And in your review, do you measure in each case the classification a special case against the definition of organized crime that you gave us for those people who are organized crime people?

A Yes, sir.

Q So that -- correct me if I am wrong -- they have to be convicted of a felony, that's the first criteria, I think, you gave us?

A No. I just said convicted of a felony in which, then I went on in depth.

Q All right. In which there was a continuous illegal business, in concert with many others?

A Right.

Q Violence involved?

A Or, and/or violence.

Q And/or violence involved, so it's not necessary for violence to be involved?

A Right.

Q And in which large amounts of money were involved?

A And/or large amounts of money, right.

Q And/or large amounts of money?

A Yes.

Q Now, is there anything else that I'm leaving out?

A I suppose, I don't know how significant thisis,but I would also consider the fact of how his resources and livelihood had been earned, you know, if his livelihood has been from illegal criminal sources or activities.

Q Now, you just said that if you saw something in the file that said somebody is connected with notorious elements

in Yonkers, that would indicate to you that that would be a positive statement?

A True. Then I wouldn't have to look for the other factors.

Q You wouldn't haveto look for the other factors?

A I would only have to in weighing the case, but you are saying a positive statement, then you got a pretty good -- then I could do the further investigation, if necessary.

Q But you don't check these positive statements to see whether they comport with the standards that you have just given us?

A Yes, sir.

Q You did. So that when you receive a positive statement in a file, that positive statement should indicate continuous illegal business?

A No, sir, I wouldn't say that. You are talking about a positive statement that the USPO's put in -- he's found some way in an investigation, some way, okay, we have no investigative arm in the field, we have no way of telling, the U. S. Probation Officer, the U. S. Attorneys and the Courts, they're their primary source of information.

Q When -- all right. As a matter of course, do you have any idea whether the informant who wrote that on the presentence report was thinking about your definition of organi

crime when he wrote whatever it is he wrote?

A No, sir, I would have no idea.

MR. MAXWELL: Your Honor, I would object to that question, it seems to be very speculative.

THE COURT: Well, I'm not sure it is.

MR. MAXWELL: If it's regard -- with reference to a specific case, but, in general, if -- if you think that when somebody wrote that he was thinking about something else?

THE COURT: No, I don't think the question is that, the question is when you see the phrase "organized crime" or "organized criminal activity" in a presentence report, do you have any way of knowing what the author of that phrase had in mind and what his definition of organized crime or organized criminal activity was when he wrote this phrase? I'll allow the witness to answer.

A I would have no way of knowing what his intentions were.

Q When you check with the informants in cases in which you are not sure, you want to check further, do you explain to them what your definition of organized crime is?

A Not particularly, I would only ask what does he mean.

Q Do you tell the inmates when a review of their case

file is coming up so they can have an opportunity to put input into that review?

A No, sir.

Q On the responses to interrogatories, Mr. Maxwell took you through a few of the categories that appeared on our response to the kinds of crimes or people who might be considered in a special case category, if I can find it here, I'll continue a little bit.

I believe you categorized the Ku Klux Klan as a subversive organization, is that correct?

A Yes, sir.

Q Now, do you have a list of other organizations that might be considered subversive in addition to the Ku Klux Klan?

A No, sir, I don't.

Q Would you consider other organizations to be subversive?

A Yes, sir, I understand there's a Department of Justice list of subversive organizations. But I do not have a copy of it. If I came across one I was not sure of, I would check with legal, general counsel, Bureau.

Q Have you read the responses to the interrogatories so that you know what categories or offenses were submitted by the Bureau?

A No, sir.

Q Well, let me go through the ones that Mr. Maxwell didn't. Threats to the President.

THE COURT: He left off at organized crime, I believe.

Q Threats to the President would be the next one, I believe. Would you categorize that person as a special case?

A Yes, sir.

Q And why?

A He would be stamped accordingly, not to be moved without Bureau approval. One of the criteria would be that the Secret Service, of course, has instructions to our institution, would like to keep knowledge of his whereabouts in case he is released. Secondly, this case being such a threat to a high official, or it would not even haveto be the President, or any others, might have subversive overtones or itmight have psychological problems, in either case, it would be important to the Bureau, to other federal agencies, to be able to let other people know where this man is.

Q Labor rackets?

A Only in the term of where it was, as stated before, a large-scale organized unified movement, such -- I have no directions on labor or unionism, as such, just alone.

Q You haven't seen any of these categories in one

piece of paper before, have you?

A. No, sir, I don't believe so, if Mr. Maxwell showed me that piece of paper, I do not remember it at this time.

Q. Now, labor rackets, why would they be special cases?

A. I suppose perhaps the violence involved within 'em or a -- someone's definition, I quote, of organized crime.

Q. But for what purpose would they have to be special case?

A. And that's a supposition on my part.

Q. So you don't know why they would be designated?

A. No. I'm not -- I do not feel I can give you a concrete answer on that one.

Q. All right. Narcotics, then?

A. Yes, narcotics, of course, where it's a large-scale planned sales and movement and operations of narcotics, would definitely be of an offense that the Bureau would definitely -- would like to know where they are and their control and movement controlled.

Q. Like to know where they are?

A. Right. Therefore --

Q. Commercialized car theft?

A. Of course, I'm just transferred here from the south an their car rings get on great scales, great organized activity, and to me the example I used this morning of

organized crime had car thefts, so I would say, same reasons that applied earlier on organized crime.

Q They want to know where these people are?

A Sure.

Q For what purpose?

A Okay. Well, as I state, this is such a magnimity, these people havemade a living, criminal activities, their businesses are ongoing criminal businesses, they're usually more sophisticated and probably from this subculture we would probably want to separate it from a youth institution or from youth or less sophisticated. And the dangers of continuing, perhaps, running their business from within.

Q Running the old business from within. Gambling?

A Well, I believe we're getting contrite. I would say on the same basis or --

Q Same basis as commercialized car theft? What about extortion?

A Extortion has its scale, also, from a very low type to very high, of course, anytime you put a person's life in danger, this is a certain person that you definitely want to keep in control or knowledge of where it is -- whereabouts.

Q Are all extortion cases at Danbury special cases?

A No, sir.

Q Are all car theft people at Danbury special cases?

A No, sir.

Q Gambling?

A I -- I'm not aware.

Q We'll skip prostitution. Do you know anything about interference with justice as a crime?

A No, sir, since that's been asked, I've been trying to think. Can you give me an example of interfering with justice?

A No.

A And I might very well be familiar with it and not recognize it.

THE COURT: I suppose within the category there would be obstruction of justice.

Q Bribery of a federal official?

THE COURT: Yes, bribery of a juror, such things as that.

A I can remember in a -- a killing, as such, you remember, in Cleveland, Mississippi, incident of civil rights worker, oneof the Klansman in that were -- was charged with that, I believe a similar offense.

THE COURT: I suppose an FBI agent trying to make an arrest who is attacked by another person as he tries to comply with his duties might be within that obstruction of justice.

THE WITNESS: Okay. In that example, I'd say no, but the one I gave you with the Klansman, yes.

THE COURT: Go ahead.

Q Bribery?

A Again, I think it would depend on thenotoriety of, you know, or you are bribinga congressman. I believe we have one under sentence, but I'm not sure whether he's a special case or not.

Q You are not sure?

A No.

Q And this might depend on thenotoriety, rather than the crime itself?

A Truo.

Q Would your answer be the same as to fraudulent bankruptcy?

A Yes, I think I'd answer the same.

Q Conspiracy?

A Again, the same.

Q You have a lot of people --

A Conspiracy to steal acar, conspiracy to rob a bank.

Q You have a lot of people there for conspiracy now, don't you?

A Right.

Q And not all of them are special cases?

A Very true.

Q Bank robbery?

A Again, about the same way, we have some bank robbers who might possibly be a special case, I can't think of any, offhand, and I know some that are not.

Q Threats against the Director of the Bureau of Prisons is the last one.

A Same as threats against the President for the same reasons.

Q He wants to know where they are, too?

A Right.

Q The Directors does, too.

None of these are automatic? None of these reasons are automatic for designation special case, is that right?

A Right, sir.

Q You don't have a list of these crimes posted at the institution to warn your case workers to look especially at these people for special case?

A No, sir.

Q Now, you have reviewed all three files in this case since the designation, haven't you?

A Yes, sir.

Q And I presume that you measured in each case the designation against your own criteria that you have given us?

A Yes, sir.

Q Now, can you tell me for Mr. Catalano what information specifically do you rely upon for the designation "special case" in your review and where does it appear?

A I don't know whether I pursued that in his case or not, after hearing all this testimony, various things, the presentence comes to my mind, the paragraphs which have been read. The letter from -- I believe through the U. S. Marshal concerning the codefendants, those two areas I believe would be -- one is in section one file and one is in the presentance.

Q So you looked at section one, which is -- which is a letter from a U. S. Attorney?

A Yes, sir.

Q And you looked at the presentence report itself?

A Right.

Q In those two places, you found information that led you to believe that the classification was a correct one?

A Yes, sir.

Q What specifically did you find in the presentence report?

A Well, of course, you are familiar with the referral tothe Gallo brothers which is going on, I'm not too familiar with this area to go into deeper -- that I'm not familiar, the

statement that this was also known to be within the organized -- I'm sorry, I can't quote the -- there is additional statements that it is believed, and that is one of those sentences that are not so positive, but there is a positive statement for the Gallo brothers.

Q Do you know anything at all about the Gallo brothers?

A No, sir.

Q Do you know whether any of them are alive right now?

A No, sir. Other than what I heard in the testimony here.

MR. CURTIS: Your Honor, at this time I must renew my request to see the presentence report, I don't see how we can go much further with this witness.

THE COURT: Yes, to some extent, you are correct. In fact, the witness is having trouble answering your questions, because, obviously, he doesn't have the documents in front of him.

THE WITNESS: May I answer?

THE COURT: Yes, go ahead.

THE WITNESS: The one statement that you asked me earlier, I said that was sufficient, as you remember, and then plus the letter from the attorney, both those two, standing alone, I would answer affirmative.

THE COURT: I don't have to do this, but we're

same as other people?

A We follow the instructions of this policy statement.

Q You say "we follow the instructions", that means you and your case managers under you?

A Yes, sir.

Q Were you present when -- Mr. Lefebvre's testimony?

A Yes, sir.

Q Did you hear him testify about his interpretation of this policy statement?

A Yes, sir, I did.

Q Do you agree or disagree with whathe said?

A Mr. Lefebvre, being a member of the team, is concerned primarily with the social aspects, the needs, the treatment goals, and he could recommend a man at close custody to the advisory committee for a furlough if he felt the needs were so. It is therefore my job, then, to apply the policy statement as how it is outlinedhere.

Q All right. So, then, you follow the statement?

A Yes, sir.

Q And it is more difficult for somebody with a special case designation to get approved for furlough?

A It requires one additional step. Either refer it to original office there, if he falls under that category, or to the central office, if he falls under that particular category.

Q It reads: ordinarily, furloughs will not be granted for persons identified with large-scale criminal activity.

A Unless there's a compelling reason.

Q Doesn't that make it harder for somebody to get a furlough if he's a special case?

A In fact, but in reality, it does not.

Q I find it difficult to distinguish between fact and reality.

A No, it is your interpretation -- it is the difference in the interpretation of "compelling".

Q Well, maybe you can just explain it a little bit so that I can understand it.

A All right. A person puts in for furlough, for instance, to see a son, to Mr. Lefebvre, who is attemptingto assist this man to return back to the community, this can be a very compelling reason. So he -- even though the man had a special case stamp on him, you know, he would not even consider -- he would give the exact same consideration as any other person. First, he would have to be minimum custody, he would have to meet the requirement of having 90 days of free conduct record, he would have to have not had a furlough, served one-third of his sentence, he would meet those requirement that would be Mr. Lefebvre's job, then it could come to advisory committee. Mr. Lefebvre would state the compelling -- the

reason for this furlough, and it might very well be brought up there that this is a special case, say to Mr. Lefebvre, "According to the policy statement, does he have a compelling reason?" Mr. Lefebvre says, "He does, he needs to visit his son, he's having problems," then we wouldconsider him on the basis of -- agreed, okay, he needs a furlough, he would be treated like anyone else in the institution, except we would say approval pending Bureau of Prisons approval, and, therefore, the handling of his case would be no different than any other -- other than the one step administratively.

Q But other people don't have to have a compelling reason to outweigh their special case designation, do they?

A Well, this is the problem I'm talking about, we require that they have a correctional goal to go on a furlough, which might be to see his son.

Q It might be to see -- cement family ties?

A It might be to cement family ties.

Q But you only require a compelling need for somebody who's a special case?

A That's true.

MR. CURTIS: I think that's all I have, your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. MAXWELL:

Q Just -- Mr. Edwards, would you open Mr. Fontana's file there to the area where this special case designation was?

A Yes, sir.

Q Would you show that to the Court? I think the Court may at least be interested in looking at what the stamp looks like.

MR. MAXWELL: Nothing further from this witness.

THE COURT: Mr. Edwards, maybe we can chat a while about the problem the Court is faced with. I suppose -- and if I suppose wrong, please tell me -- that one of your jobs is to try to keep peace and tranquility among the prisoners at the Danbury Institution, is that correct?

THE WITNESS: Yes, sir.

THE COURT: Do you agree with me that one of the principal causes of unrest is the opinion that a prisoner may have that he's being treated unfairly?

THE WITNESS: Yes, sir.

THE COURT: Wouldn't you think that?

THE WITNESS: I would agree.

THE COURT: All right. And another cause is that

he's frustrated in trying to get answers to what he considers unfair treatment, would you agree or disagree?

THE WITNESS: I would agree with you there.

THE COURT: Now, do you further agree with me it's sometimesnot so much the fact of whether there is actual disparity, but the fact that the prisoner thinks there's disparity?

THE WITNESS: Very true.

THE COURT: Is that true?

All right. So whether or not a prisoner has special case designation that's rightfully on his file according to rules and regulations, it can be a cause of unrest and discontent if he thinks the designation has been put on there unfairly, do you agree with me on that?

THE WITNESS: Yes, sir. May I add --

THE COURT: Will you further agree with me that with respect to the categories we have been talking about, they're fairly well defined, except when we get to the range of organized crime? Now, I'm not forming any judgments, but will you agree with me that the case workers had some difficulty with that category? If my recollection of the testimony was

correct, I remember the words "vague", "matter of judgment", "when I'm not sure, I see my superior", "I prefer you ask my superior to answer that question", and so forth, that the phrase itself is not only troublesome to Courts, but even to men who are not lawyers, like yourself, isn't that true?

THE WITNESS: It is -- can I comment?

THE COURT: Yes.

THE WITNESS: It's an institutional problem. It is not so vague in my mind, of course, and -- my judgment, but with the lack of written instructions, the case workers have some difficulty. But the subject of organized crime, I don't believe they have as much trouble as they indicated here on the stand.

THE COURT: All right. But you will admit that perhaps an inference can be drawn from what I heard that it is not a clear-cut defined area?

THE WITNESS: I can't -- to me, it is fairly defined. I mean it's -- we both agree it differs from a person does not --to me, tht's organized crime, to me, it's pretty plain and simple.

THE COURT: Well, will you admit with me that the phrase "organized crime" can have a spectrum of definitions, one which indicates any criminal

activity in which there is joint participation that reflects organization and premeditation, to the other end of the spectrum which some people think of organized crime as Mafia, Cosa Nostra, the organizational type of corporation of crime, the Al Capones, the Vito Geneoveses, and so forth?

THE WITNESS: But at FCI level, I will probably in my carrer, if I stay there any longer, will never cross making a judgment in that type of a case, more than likely. I mean someone -- when you speak of the family or Mafioso, something of this serious nature, I'm sure this would be handled at a higher leve, would not be to my judgment.

THE COURT: I'm talking about what the definition of organized crime means to various people, or I should say the connotation one would draw from the phrase "organized crime". In some minds it may be a group of men who gettogether, formulate a plan to commit a crime and execute that execute that according to a well premeditated scheme. To some other people, it may mean almost the General Motors of crime. The Mafioso. Do you agree with me on that?

THE WITNESS: That's true. But I hope that my case workers haven't told you , you know, that even

though he had a trouble putting in a verbal definition, that that's another ballgame.

THE COURT: Which is the other ballgame?

THE WITNESS: Well, the differences when we state -- well, such in the cases we just read, this organized -- there's been an organized activity, rather than being a family situation, organized -- there I go, I used the words what you just talking about, does have a connotation, but I think there's -- that's step -- that's on the very far end of the scale that I was mentioning to you.

THE COURT: WE could theorize on this all day, but the fellow who picks up a nickle number bet in the street or in the factory and eventually that money flows into a central kitty in another state and becomes part of a multimillion dollar daily operation, technically, we could say that that nickle-dime operator is a part of the criminal syndicate, and yet, you and I both know he is probably picking up like $30 a week and hasn't the slightest idea where the money ends up.

THE WITNESS: Professionally, we'd have to consider him, say, like in a ring, andput him on the very outer end of it, and give it no more weig

than that.

THE COURT: All right. Now, back on the track. Whether a prisoner is right or wrong, but assume in good faith he thinks he's being mistreated, what do we do about it? In other words, you have said in your opinion that the special case designation is a fair and reasonable one, obviously, the petitioners didn't agree with you, or they wouldn't have brought this lawsuit. But maybe they didn't know what you just read off, or maybe they did, I don't know. But what can we do about it? You tell me as a prison administrator what your opinion is to remedy the situation where a case worker sits behind a desk, informs a man that he's getting a designation that's different than anyone else's, so right away there's fear in the petitioner's mind that he's going to be treated differently, the case worker is all typed up with confidentiality, how do we resolve this understandable frustration?

Are there administrative remedies available that open the door a little bit here, and if so, how?

THE WITNESS: Yes, sir, your Honor. As I say, they definitely advise -- they're advised of the BMB, which allows writing to any official,

particularly the Director of the Bureau of Prisons, with his address in the administrative remedies which provides a form and channel of command to go through.

As you know, weare now giving copies of our progress reports, we first being by initialing out and even -- we're swinging way, I think, to the left in informing an inmate, a resident of how we're judging his background. I can remember when this was something that was never to be discussed, you know, you guarded it like nobody's business, even the fact that he was a special case, and this would take hours and hours of trying to defend something without really saying what you really meant, and I believe the Bureau of Prisons is approaching a point now that we're beginning to become more forthright and more direct saying this is where we're getting our information.

Mr. Smithers testified to statements that he gave, I believe, Mr. Catalano directly out of the presentence. Years ago, this would neverhave been done, you know, because the probation officer would not want his name mentioned, you know, U. S. Attorneys, you didn't mention their names, because they didn't want to be bothered by friends and family bombarding them, but we're coming into a more concerted type

effort now where we can give this information, the U. S. Attorneys are ready to stand and take the heat as well as -- you know, whatever information they give us.

THE COURT: How is that done? Can the prisoner get this type of information from the case worker because, subject to a 180 degree change, I have the opinion from what I have heard in this courtroom that the case workers are -- play the thing pretty close to the chest and they're kind of leery about telling exactly why a prisoner is a special case.

THE WITNESS: I think this is the gray area that we're discussing. You also noted my fear about divulging certain information, and this is the gray area we -- into, and as I say, I think it's getting lighter, less gray now, my case workers now are giving out more information outside the files, and now in counseling the man on his first interview before we write a progress -- and this is what they're saying about you, and what are you saying, and I believe most of the Bureau of Prisons institution are going more to this line. It may take institutions -- like this hearing hereto say: okay, gee, that didn't hurt, we'll give him more information and we'll lessen the frustration -- and staff.

THE COURT: Your disciplinary report things are faily well open, aren't they?

THE WITNESS: Yes, sir, now they are. I'm a member of the adjustment committee, we completely -- they -- of course, it's not an adversary system, of course, to a master, but we're finally serving due process, 24 hours prior to it.

THE COURT: Yes, I'm familiar with the system, actually, at times, that could be a more explosive situation because some of the witnesses or some of the incidents involve prisoners who are going back to live with each other that night after the disciplinary hearing, whereas, with a presentence report and a letter from the United States Attorney, I don't think either one of the latter gentlemen are quaking in their boots becausesome prisoners at Danbury may be let out to go to a funeral.

THE WITNESS: What worries me about more presentence information coming out is the fact that more and more as they are read, the presentence becomes more sterile, in other words, where a probation officer is able to talk to family or neighbors who will give freely comments concerning the inmate, you know about the guy then, and if they know that that's going

to be coming to him directly, will they talk so freely?

THE COURT: You are putting forth a classic response to those that say that the presentence report should not be turned over. On the other hand, the answer to it is they may become more sterile, but they're certainly more accurate, also.

THE WITNESS: If you think that outweighs our treatment need, I'm asking you --

THE COURT: But, anyway, my concern here is this. The prisoner who gets a SC can go into this administrative remedy procedure, can he not?

THE WITNESS: Yes, sir.

THE COURT: Now, that -- talking about sterile, I mean, that could be pretty sterile, too, when we see something like I've seen in this case, where it says: "appeal my special case designation" and he gets back "denied" or something like that. Moreover, take the situation where one prisoner gets an en banc for being a special case, and another prisoner doesn't, who explains that to a prisoner? They're both special cases, one goes in and has a heart to heart talk with two examiners, true, it's then sent to Washington, but with a recommendation, the other

fellow goes in and they say, "Well, gee, we can't do very much, everything has to be turned over to Washing ton," right away it's a faceless proceeding far away from Danbury. Now, how is something like that explained?

THE WITNESS: Well, unfortunately, we don't -- can't explain it quite as well as we should do, being a separate agency, however, the examiners do give a reason for the en banc hearing in saying, "Okay, we're referring this to en banc hearing due to the notoriety in this case, due to the large amount of money or due to the seriousness of the offense, or due to the seriousness of the community," and all the case worker can do is say that, and, of course, that brings "why", makes it more difficult. The case worker, of course, being in there, does hear the reaso why he's recommended to en banc.

Now, if the examiner gives him no other reasons, then, we don't know.

THE COURT: All right. Then, let me ask you this question. No one is infallible, and we all make mistakes. Do you think that a man who has been given a special case designation has a right to object to it

THE WITNESS: Yes, sir.

THE COURT: All right. Do you think that the administrative remedies by which he writes on a small piece of paper adequately gives him a forum to challenge that special designation?

THE WITNESS: Yes, sir, I do.

THE COURT: And I take it, therefore, that responses such as, "You have been designated a special case by the Bureau of Prisons, central office, acting on the recommendation of the chief classification and parole, FCI, Danbury, the designation of special case was made becauseinformation from investigation reflects -- it says reflect, but it should be raflects -- a probable link with organized criminal activity. Request for special case designation removal denied," you feel that's an adequate answer, and a person receiving that will say, "No, I know why I have a special case designation, because I have learned something I didn't know before"?

THE WITNESS: No, sir, here's the thing. I'm not aware of that answer, of course, but others of that nature I have to investigate, and usually write the draft by which they are answered by now a department head, plus associate warden must sign, this in the case of someone who is on the borderline, will

call it to our attention in case it was overlooked for some reason, and it could be looked into, and if it was for some reason not -- shouldn't -- or should not have been a special case, it could be changed, and that's why I say that's an effective way.

THE COURT: But where does a prisoner get the opportunity to come in and sit down and say, "Look, I'm not a member of organized crime, I never was," have the following reasons A, B, C and D, and let us just assume for the sake of argument all 18 of his reasons are blatant lies, absolutely contradicted by the record, and your decision doesn't change, the special case remains, but where does he get an opportunity to challenge a designation which affect his stay at Danbury?

THE WITNESS: Well, any case worker, if the guy brought a -- should certainly look into the factors you know, what is he saying, if there is exactly contradictory to what they say, say in the information we have, it should ring a little bit of bell that all the information he has, and he should rereview the information we have and weigh it against what the inmate told him. And I think that -- I would hope that my case workers are sensitive enough that they

would pick this up and not just turn a cold ear on it.

THE COURT: But what if the case worker doesn't tell the person why he's a special case? You may know that your case worker wouldn't put a man in special case unless there was a good reason. On the other hand, there may be many other people who would feel that he was put in special case because he got a letter from a third party's estranged wife, and if the case worker -- I can't tell you, it's information we have in the file, where does that leave the prisoner?

THE WITNESS: I do not deny that we're not hesitant about giving out information, as I say, and I think that is -- possibly a weak area, but, again, some information or some reasoning is given the inmate at the time of classification, but, again, we do not -- as I have testified, and many times, we don't call him in andhere's the stamp on your file and here's the reasons for it.

THE COURT: That's not done?

THE WITNESS: That's not done. But should Mr. Lefebvre -- someone is asked, tries to give an -- best explanation as I can, as I said, with that ingrained hesitancy to reveal information that

comes from another party.

THE COURT: I suppose, I don't see how it could be avoided, by Mr. Lefebvre or anyone else when he says, "I would lie to apply for a furlough" --

THE WITNESS: Then, he finds out real quick.

THE COURT: Finds out real fast, because he's explained that there's a three-step procedure for the special case prisoner and a two-step procedure for everyone else, right at that point he'll -- sure learns about it, is that correct?

THE WITNESS: Right.

THE COURT: And then the natural question comes up, "Why am I a special case?" And we get many times the answer, "I'm sorry, I can't tell you, it's a confidential communication between our office and another agency," and then where are we?

THE WITNESS: Okay. Well, in perspective, though with 789 inmates, we are trying to program them in, -- say, there are ten men that we know that we can help if we can only get 'em started, turning 'em around in some way, you are talking about 30 people. True, I wish that we could spit it out for them and exactly know, and perhaps these people have different motives, but we get hit with so many

different motives that if we could only find out exactly what information you have, then we could get rid of it, contest it, and fight it, in a sense, what you are talking about is good, perhaps this is errorless information, perhaps this right should not be violated, but the evidence I have seen in the last three or four years have been of the nature I mentioned. But I believe that those do have -- have this administrative remedy, they have a case worker who says to them -- perhaps he doesn't spit out and reduce their anxiety by giving them exactly the Gallo brother statement or such, but he gives them the statement, "You may be connected with a notorious" -- he then may through this administrative -- in special cases, I have never had anything to do with any organized activity, this would go to the AW to be signed off, myself, I'd have to report to the AW and then it is written up and given to him, through this, there's another two reviews by local institution policy, in one case -- in two cases this happened, in one, a person was involved in something like $27,000 worth of counterfeit bills, which is a large sum, there was a statement by a police officer he believed this individual is the leading distributor for the New York

area. This guy wrote this and this was done -- stamped "special case". This was reviewed by myself, and I said I really don't see where this guy could have been involved in organized crime, all he was doing was causing -- I think he was just a minor guy, he got caught with his pocket trying to turn a buck or two with it, and we removed the special case designation.

THE COURT: Yes, but this appeal, or this review, I'm sorry, by you -- and you used the phrase "we".

THE WITNESS: Associate warden.

THE COURT: Yes. That isn't prescribed by regulation, this is an internal review, is it not?

THE WITNESS: Right. Yes, sir.

THE COURT: Maybe a prisoner doesn't even know this is going on?

THE WITNESS: Right. This is true.

THE COURT: One other question I have. If a person is not a special case, does the warden need permission from Washington to transfer him?

THE WITNESS: No, sir.

THE COURT: In other words, a warden can send a man to Lewisburg, Atlanta, Springfield, or maybe even the Whalley Avenue Jail or a CTC without permissi

from the Bureau of Prisons if the man is not special case?

THE WITNESS: If he meets all the other requirements, yes, that's right.

THE COURT: If he is a special case, it does go to Washington, is that correct?

THE WITNESS: Yes.

THE COURT: And I know about furloughs -- it's furloughs --

THE WITNESS: Yes, sir.

THE COURT: Incidentally, we talk about a team, an advisory committee, and it's been ending there, but the warden has something to say about all this?

THE WITNESS: Definitely, the advisory committee is strictly an advisory agent to the warden, and then it's never okayed until the warden puts his signature on it.

THE COURT: So we're talking about a three-step versus a four-step?

THE WITNESS: Right.

THE COURT: It's the team, advisory committee, warden, if you aren't special case. Team, advisory commitee, warden and Washington if you are?

THE WITNESS: Yes, sir.

THE COURT: Now, so I know about furloughs, furloughs go up through the warden, unless you are special case, is that correct?

THE WITNESS: Yes, sir. Or there is one other category, a person of extreme violence would have to have Bureau approval.

THE COURT: Is his file marked?

THE WITNESS: I'm speaking of one that's not marked.

THE COURT: How about CTC? If he is not a spe case, who has the final word? Institutional offic or Washington?

THE WITNESS: Institutional.

THE COURT: All right. And let's see, parole, I guess, was the last big category, anyway. I gues it doesn't matter if you are special case or not, y have a right to have your parole application filed and heard if you meet the basic --

THE WITNESS: Right.

THE COURT: -- general rules, and they apply t special case and nonspecial case?

THE WITNESS: There's no specification for spe case on the parole.

THE COURT: Except the en banc?

THE WITNESS: And that's a parole board direction.

THE COURT: Okay. Thank you, Mr. Edwards.

(Witness excused.)

THE COURT: Where are we now, gentleman?

MR. CURTIS: I don't have any more questions, your Honor, I think we have to talk now about what's going to happen next. We have --

MR. MAXWELL: I have -- excuse me -- I just have one more thing there, your Honor, I would like to submit to the -- to the Court for in camera review the parole summaries on the following petitioners I initially had, since we initially had also Mr. Ianelli and Mr. Stein here as petitioners, I obtained summaries of their parole hearings, I wouldn't take them out because it would sort of destroy the integrity of the document which has been provided, but the parole board has requested that I provide these to the Court for in camera review. I believe it has been done in previous cases in this court here, I believe the Massiello case was one where there was in camera review of these, and I would like these to be marked as a Court exhibit for the Court's review.

MR. CURTIS: I'd like to ask a couple of questions

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

CATALANO, et al.,

- versus -

UNITED STATES OF AMERICA

Civil Action

No. B-883

- -x

United States Court House
New Haven, Connecticut
May 23, 1974

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

For the Petitioners:

DENNIS CURTIS, Esq.
STEPHEN WIZNER, Esq.
ROBERT DAVIS, Law Student Intern
Yale Legal Services Organization
127 Wall Street
New Haven, Connecticut

For the Respondent:

THOMAS F. MAXWELL, JR., Asst. U. S. Attorney
Federal Building
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Bridgeport, Connecticut

THE COURT: What's your schedule this morning, gentlemen?

MR. MAXWELL: Your Honor, the government has present in court Mr. Al Butler, who is from the Bureau of Prisons, and Mr. Wrenn, who is with the Board of Parole. Mr. Wrenn is the individual who prepared the affidavit which was submitted to the Court at our last meeting here.

Your Honor, at this time I would like to file with the Court a Bureau of Prison's policy statement, subject: special offenders, number 7900.47. This policy statement was issued April the 30th, 1974, and became effective May 1, 1974, and I would file this with the Court.

Do you have copies? I presume you probably do.

Yes, the petitioners' representative has indicated that they have a copy of this policy statement.

Your Honor, and I would refer to the third page of the policy statement, the third paragraph down, wherein it states: "All inmates presently designated 'special case', 'special offender' or stamped case, based on earlier memoranda on this subject, should be reviewed in light of this policy statement."

I have been in touch with officials of the Bureau of Prisons in Washington, D.C., and they have indicated to me that in conformity with the policy statement that I have just cited the -- a review is currently taking place of petitioner Pasquale Catalano and Mario Ingoglia as to whether or not they

should be maintained on the special case and the special offender list.

With regard to the petitioner Donald Fontana, he is not on the special offender list and his file is no longer stamped special case, so, actually, a review is not taking place with regards to him.

THE COURT: Well, although I must try to complete this case by 1 o'clock, because I have other matters, and so I don't want to get into any extended colloquy when we have witnesses sitting in the courtroom. It does occur to the Court that this new policy statement is the first, if my understanding is correct, written set of guidelines with respect to special case in the form of a policy statement or an official document from the Bureau of Prisons, is that correct?

MR. MAXWELL: I believe that's correct, your Honor.

THE COURT: All right. Now, obviously, somebody else other than the Court has had the thought that in view of this new policy statement, perhaps the whole special offender designation for each and every inmate in the prisons should be reconsidered.

That indicates to me that Mr. Carlson or his agents felt that perhaps there has been some misinterpretation, misunderstanding and perhaps some arbitrariness in the past due to the lack of a written set of standards.

Now, if that's so, why isn't it just common sense to agree without any great feeling one way or another whether you

won or lost the case, to dissolve or vacate the special case designation in this case, and start fresh with a clean slate, and determine whether under the new policy statement the two petitioners should be a special case, they may or may not be?

MR. MAXWELL: Well, your Honor, it would appear to me that I -- I have seen nothing that has come out in the hearing which would indicate to me, and nothing which would in my discussions with the Bureau of Prisons where I would see that there would be any substantial change. From reviewing the policy statement it is more or less a formalization of procedures which were followed with regards to Mr. Catalano and Mr. Ingoglia.

THE COURT: That may be, and assume that even under the new policy statement there may be challenges by those who are designated special case. All I'm saying is that it does eliminate one area of complaint against the Bureau, and that is, that whether a prisoner belongs on the special case list or not, there were no set standards to test his placement on the list.

I don't know if I'm making myself clear in articulating the difference whether a prisoner should be on a certain list or not in -- contrasted with a set of standards which puts him on that list or not.

MR. MAXWELL: Well, I think I understand the Court's position. I think what I'm sort of looking behind is

that, I'm thinking that since I have seen -- in view of the fact that this case has been pending for some time, officials in Washington, naturally, have reviewed the files of all of the petitioners,with regard to the case of Mr. Fontana, he was, in fact, removed. I think if we were to do this and then two weeks from today the files of Mr. Catalano and Mr. Ingoglia, you know, they said: we'll still maintain you on special offender list and stamping your file special case, I feel fairly certain I can't answer for the petitioners, but I feel fairly certain they'll come back to the Court, and they'll say: we're still this, and we still want to be heard on it.

THE COURT: Well, there's several answers to that, it seems to me. One is that even if that were so, there would now be a set of standards that we now have that we didn't have before, I'm not saying I'm prejudging that situation. I'm just saying there are guidelines that we didn't have before.

Secondly, even if Mr. Catalano and company were taken off the list, another inmate who is on the list could challenge the designation in these policy statements, anyway.

And thirdly, there might be a difference in an officia viewing something that is done and trying to justify it because the case is in court. And that same official looking at a case with the slate clean.

No court cases are pending, and he has to follow, you know, some other guidelines that he didn't know about. I

mean Mr. Smithers certainly wasn't familiar with all the guidelines, I don't think any one's testified that they had a clear knowledge of how this whole system worked, but as I read through these new guidelines, certain things have to be done.

I'm just saying there's a possibility that when somebody goes through these procedures, Mr. Catalano may not be a special case, but if he is, let him bring another action. If he wishes. It seems to me that sooner or later someone is going to bring one, anyway.

I don't see how my decision, if it goes off on the fact that these gentlemen may well deserve to be special cases, but the whole procedure lacks due process because there's no guidelines, no standards. One witness went as far as saying: we depend on prison lore, how that helps anybody, it's not going to throw any light on these new guidelines, certainly.

Let me hear from other counsel on this.

What relief are you actually seeking here?

MR. WIZNER: We are seeking several types of relief, your Honor, first of all, let me characterize these guidelines as we see them, if I may. These guidelines, as far as we're concerned, codify past practices and don't solve the major problem. The major problem is that someone may be designated a special case on the basis of a unilateral view of certain allegations or information without being afforded the opportunity at least to confront that evidance and say something about it.

As soon as some official at the Federal Correctional Institution at Danbury finds even on the basis of these designations standards that certain facts are true, whether or not they are true, he immediately forwards the case to the Bureau of Prisons.

We think that there ought to be -- we're not saying there should be a full adversary hearing at the time designation takes place, but some kind of administrative procedure whereby the inmate has an opportunity to be heard before he is designated, because once he's been designated, he then has the burden of getting that designation removed, and once he's been designated, certain kind of disabilities follow therefrom, so a major item of relief we seek in this case is not for the Court necessarily to set forth one, two, three, four, five, six guidelines for administrative procedure, but to require the Bureau of Prisons have some procedure, no procedure is established by this, just guidelines are set forth.

The second thing, of course, we're seeking, is specific relief for these specific petitioners,we would like Mr. Ingoglia forthwith released to a Halfway House, and so ordered by the Court, we would like similar relief for Mr. Catalano with respect to parole.

We think the hearing should go forward, and the witnesses from Washington have relevant testimony to give. Our cross examination will not take that long, and we fully intend

to finish by 1 o'clock.

THE COURT: Why don't we hear the witnesses? They have traveled from Washington. We can always discuss this later.

MR. WIZNER: Thank you, your Honor.

MR. MAXWELL: The government would call Mr. Wrenn.

BERNARD R. WRENN, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you please state your name and address for the record?

THE WITNESS: Bernard R. Wrenn. Do you want my home address or business address?

1204 Drake Street, Northwest.

DIRECT EXAMINATION

BY MR. MAXWELL:

Q Mr. Wrenn, by whom are you employed?

A I am employed by the United States Board of Parole, sir.

Q What capacity, sir?

A I'm the chief hearing examiner for the Board.

Q Mr. Wrenn, would you explain to the Court what your duties are as the chief hearing examiner, board of parole?

A My duties primarily are to take care of the administrative matters of what will approximately be 27 hearing examiners who will be in different regions throughout the country.

Q And for the record, it is my understanding that when an inmate of a federal institution goes up for parole, he goes before a -- two hearing examiners?

A He goes before a panel, yes, sir.

Q And the panel then makes a decision to grant parole to this individual or to deny parole to this individual? And in

certain cases, to refer it for original jurisdiction or an en banc consideration?

A That's basically correct, we call it a tentative decision, since it is open to review by the board.

Q And do you have occasion to review the decisions of the hearing examiners on granting or denying parole?

A I have had occasion to review a certain number of cases, I don't review all cases, but the cases are reviewed either by me or the administrative hearing examiner.

Q Now, Mr. Wrenn, with regard to petitioners Donald Fontana, Mario Ingoglia and Pasquale Catalano, can you tell the Court whether or not these petitioners when they appeared before the panel on their parole hearing were considered by the board en banc or original jurisdication case, or they were considered in the normal manner?

A They were considered in the normal manner, as far as I can determine.

Q What do you mean by the normal manner?

A That the hearing panel hears the case at the institution and they make a tentative decision on the case.

Q Now,Mr. Wrenn, the case that's currently before the Court is the claim by the petitioners that their files are stamped "special case" and they are on the special offender list, and that because of this type of a designation, they were

denied parole. Now, can you tell the Court how the stamp "special case" and/or being on the special offender list would affect an inmate when he applies for parole and appears before the parole hearing?

A. It alerts the examiner panel that there is something special about the particular case itself. It does not necessarily mean, of course, that it is organized crime, there are a number of other types that come under the criteria of the policy statement, and in these particular cases that we're dealing with, of course, the matter of organized crime was not considered to any extent, apparently, because they weren't heard en banc.

Q. Now, Mr. Wrenn, can you state whether or not the special case designation played or was one of the reasons why the ptitioners were denied parole?

A. As far as I can determine, this had no bearing on the outcome, no.

Q. And you make that statement based on a review of the hearing examiners --

A. Summaries and the following material, yes.

MR. MAXWELL: I have nothing further.

CROSS EXAMINATION

BY MR. CURTIS:

Q. Mr. Wrenn, you are the chief examiner of the parole

board?

A That's correct, sir.

Q In your duties, do you become involved in policy matters?

A To a certain extent, I do, yes. I don't have the final authority, though, as far as policy is concerned.

Q Are you responsible for training the examiners?

A Yes, I am.

Q Could you tell me what the purpose of the OC designation is as far as the parole board is concerned?

MR. MAXWELL: Excuse me, your Honor, I would ask Mr. Curtis to go further on what he means by an OC designation and what this witness may understand.

THE COURT: Let's findout what designations there are, and then what effects, if any, they have.

A Would you like to know the criteria that we use for designations, is that what you are asking?

THE COURT: First, find out what designations are there. We know there's what? Special case.

THE WITNESS: We have -- we use criteria, we use four designations. One is national security, those are prisoners who have committed serious crimes against security of the nation. Espionage, aggravated subversive activity.

THE COURT: ON that man's file, what is put on it? National security?

THE WITNESS: These are the types we hear en banc or original jurisdiction. In other words, thes are the cases where the examiners don't have the final say so in the case.

THE COURT: I'm trying to get on the same wave length Mr. Curtis is on and try to get you on it, we're trying to find out what designations there are on a file, what stamps are put on a file to alert either the hearing examiner --

THE WITNESS: Oh, I see, all right.

THE COURT: -- or a warden or you or anyone else -

THE WITNESS: All right.

THE COURT: -- that this man, as you put it --

THE WITNESS: Yes.

THE COURT: -- has something special about him.

THE WITNESS: All right. It's a stamp that the Bureau of Prisons uses, and it concerns that this inmate will not be transferred until the okay is given by the central office, something -- I'm saying -- this is not exactly what it says, but basically --

Q You are talking about the special designation you see on the file?

A. Right.

Q. Do you use the same file as the Bureau of Prisons uses?

A. Yes, we do.

Q. Same exact file? You are in the same building, your offices are in the same building?

A. In the same building, yes.

Q. Now, do you have any marks, stamps or indications that you put on the file for your own purposes to designate these cases?

A. Would you like for me to go through the routine that we go through -- the procedure that we follow on special cases, or are you just --

THE COURT: All right, why don't you --

Q. Why don't you just go ahead and do that, we might save time?

A. We send a panel out to an institution, for example, for Danbury, we hear the case, and if we see the special designation stamp, we immediately are alerted to the fact that this is a special case of some type, all right? But at that point, we really don't know what it is until we get into the file material itself. Now, once we get into the file material, and once we have talked with the -- had the interview with the inmate, we make a decision as to what type of special case it is. We can make a tentative decision as to whether it's OC or

not, but we don't stop there, we carry it a step farther and we try to get --

Q Now --

A All right.

Q Now, you said --

THE COURT: Why don't you let him finish?

Q Excuse me.

A All right. If we think that there is a possibility that's an OC case or one of these other categories we might be using, we don't make a clear-cut decision in the case there, we return it to Washington indicating that it's a possible original jurisdiction case, which it should be in en banc, then it comes back to Washington, of course, when we are regionalized, it will come back to the regional office, at that point, an investigation is made with the Justice Department, we make an inquiry with the organized crime section of the Justice Department and find out if there's any further information that we can get.

Then the regional director ultimately decides on the basis of all the information whether it's going to be organized crime or -- en banc case, or not, that's what I'm trying to say, an en banc case, at that point, then if he decides that it should be en banc as a result of the organized crime matter or for any other matter, using this criteria that we follow, then he makes it an en banc or original jurisdiction case, that's

basically --

THE COURT: What are the four categories?

THE WITNESS: The four categories, I was just going to give you those, the four categories are national security, which is one; organized crime is two; three is national or unusual interest; and four is long-term sentences, 25 years or more.

Q Now, are you reading from a document?

A I'm reading from a document, yes, sir.

Q Could you tell us what that document is?

A It's our rules and regulations published in the Federal Register.

Q Could you give us the cite for that so that we can have the record?

A It's Volume 38,No. 184, Part 2.

Q And is there a section number for the --

A It's 2.22, called original jurisdiction cases.

Q So you have four categories that your examiners are looking out for when they're out in the field?

A Yes, sir.

Q And in some cases, at least, there is a trigger, the special case marking on thefile will trigger their interest in this case and so they'll look further?

A Yes, sir.

Q Now, let's zero in on the organized crime designation. Could you give me -- tell me what the purpose of the organized crime designation is?

A I don't know that I understand. Could you elaborate just a minute -- a little bit more on that, what purpose it is? You mean the stamp itself?

Q What purpose does the designation have?

A If we determine that it is organized crime, all right, if the regional director determines that it's organized crime ultimately,then the case is set for a en banc or original jurisdiction case, in other words, it's decided by a greater number of board members than just the two examiners out in the field.

Q Are there any rules that you know of that make the designation "organized crime" mean that an inmate will spend more time in prison because of that designation?

A We have guidelines that we follow, Mr. Curtis, I think you realize that, and generally in -- our initial interviews, initial hearings, we follow these guidelines pretty precisely. Now, we can go outside the guidelines, if we feel that the offense is such,we can go outside the guidelines and perhaps have--

Q Is the designation "organized crime" a reason in itself to go outside of the guidelines?

A Not necessarily, it might be, but not necessarily.

Q Is there a relationship between the organized crime designation and the guidelines?

A I would say there is a relationship if I -- I think I understand what you are saying. Go ahead.

Q How does an en banc hearing work? Would you describe how the -- what the procedure is in an en banc hearing?

A If it's decided that it's going to be an en banc case, the panel summary, along with a -- a -- an additional summary or report is written back in the D. C. office, which is a very complete type of summary with some additional information in it, like -- a complete breakdown on the codefendants and this sort of thing.

This will then go to the entire board to be determined by en banc, the en banc process.

Q Who writes the summary?

A It can be written by a number of people, the case analysts have been doing them in the last several months.

Q Where does a case analyst -- where does he fit in in the hierarchy --

A He does not hold hearingslike examiners do, he's on a different level than the examiners.

Q Would he be in a higher level?

A He's a professional individual.

Q He's a professional individual?

A Yes.

Q But he's lower on the totem pole in the parole board than the examiners?

A Moneywise.

Q Moneywise, I suppose that's one way to measure it?

A Yes.

Q So by the time the board, the full board, gets this case there has been a summary made up by the examiners at the institution?

A Right, yes, sir.

Q There has been another summary made up by somebody?

A Yes, sir.

Q Probably a case analyst?

A Right.

Q In Washington?

A That's right.

Q There has been an inquiry?

A Right.

Q As to the circumstances, at least, surrounding the designation from the criminal division of the Justice Department?

A Yes, affiliation, yeah, right.

Q Tell us what form that --

A It must have gone --

Q -- that inquiry could take, if you would, please?

A What they would send us.

Q What you would ask them for?

A We would telephone over to a certain particular individual in the Justice Department -- and I can't recall his name right at the moment -- and ask them to investigate as to whether or not this man has OC connections, and then they take it from there.

Q You use OC as kind of a shorthand term to designate organized crime?

A Organized crime connections, yes.

Q Is that understood in the Justice Department as being organized crime, as well?

A Sure.

Q Does the parole board initiate OC classifications on its own? Or would you always operate in response to somebody's -- somebody else's designation?

A I can't think of a case offhand that I have run into where we have initiated it. It's usually we're alerted some way if that's what you mean, we're alerted by what's in the file material or what -- perhaps, the Justice Department gives us as far as information.

Q Do you ever get letters from criminal division indicating thatsomebody might be a special case?

A Yes.

Q Or OC?

A We get additional information, we have had, if I remember correctly, people that come over and give us information personally. On occasion, I can't cite the case to you offhand, but we have had this happen.

Q Do you mark files with any of your own notations as far as organized crime is concerned?

A We -- the summary that we prepare, that one of the case analysts prepares, on that summary is indicated why this person is being given en banc consideration, and it can be one of these four.

Q But you don't have a stamp that you mark the file with?

A We don't have a stamp, no, it's just written into the summary, there's a slot for it like organized crime or national security, whatever it might be, so it will alert the parole board as to what type of case it is.

Q Just to check now, are there any other cases besides these four that get en banc consideration?

A No.

Q Now --

A May I say, sir, if this happens, then, I don't know about it at the moment, I don't believe so, I can't think of a case in the fifteen years --

Q As the chief examiner, you can't remember a case?

A No.

Q In which one of these four --

A Right.

Q -- other case other than these four were taken en banc?

A I can't think of a case, no.

Q All right. What is the parole board's definition of organized crime?

A I think the -- the basic definition is that -- is that the -- the offender and the offense was a very sophisticated type of offense, where there's a number of people involved, and there was a great deal of organization to the -- the offense or the action that took place. I think this is my own definition.

Q That's your own definition?

A This is basically what the board would consider, yes.

Q And you are the chief examiner of theboard?

A Yes.

Q And a number of people involved?

A And the type of offense may be thrown in.

Q Type of offense?

A Yes, magnitude of it, and that sort of thing, which would fit in with the organization.

Q When yousay "type of offense", could you give us --

A I'm talking about --

Q -- give us a lucidation on that, please?

A Oh, a securities case that would have a great deal of value in money, like a half million dollars, of this natu carried through a number of states where there's every indication them was a high degree of organization to it and sophistication. That is what I mean by that.

Q What about a crime such as prostitution?

A It's possible, it would be possible, I suppose, depend- ing on themagnitude of it and how it's set up. If you just want an example --

Q But do you have any special list of crimes that automatically trigger the OC --

A No.

Q -- designation?

A No.

Q In your mind?

A No, no. Special? No special type.

Q Can you point -- can you tell me under what statutory authority the parole board designates people as organized crime?

A I can't give to you -- I just don't know it offhand, if there is on --

Q Are there any rules promulgated by you to your examiners or by the parole board generally to tell them how to classify somebody as an organized crime case?

A Well, as I told you, the panel does not have the ultimate decision, that -- strictly with the regional director, but they do know and we do discuss how they're to be alerted and we discuss some of these things about -- about the information in the file material, the presentence report and this sort of thing.

Q Who did you say made the final decision in that matter whether or not to designate?

A The regional director.

Q And the regional director is amember of the parole board?

A Is a member of the parole board, yes.

Q Do you know whether the parole board itself has put out any internal memoranda that would give guidance to these regional directors in how to classify somebody as an OC case?

A Nothing but what's in the rules and regulations, as far as I know, at the moment.

Q Do you train the examiners to recognize organized crime casesin any way other than you have specified to us already?

A This is basically what it is, what I have told you.

Q And you tell them to look for a sophisticated type of crime?

A Yes, pluso ther information they might get out of the presentence report or other file material.

Q Does the parole board do any checking other than ask the criminal division or reports on these inmates that are designated spacial case? I'm sorry, designated organized crime?

A No, this is basically the information we would have.

Q Now, to your knowledge, are inmates informed of the fact that they're going to be considered organized crime cases by the parole board prior to their classification?

A We tell them -- the panel tellsthem that you are -- we are referring your case to Washington for possible original jurisdiction. That's basically what we tell them.

Q That's what you tell them? You don't tell them that they may be organized crime?

A Because we're not certain at that point, so we don't know at that point whether it's going to be original jurisdiction or not.

Q Do you inform them that there's evidence in their file which leads you to believe that they might be classified as organized crime?

A Not as a matter of habit do we do that, no.

Q Do you have a rule that tells you: do it or don't do it?

A We have a -- a rule that -- that -- well, what we generally tell the examiners is that it would be preferrable if we -- if we don't give them -- or don't give them this information at the time of the hearing.

Q So the inmate is not given the opportunity to rebut the information?

A Not at that point.

Q Or to request the information?

A Not at that point.

THE COURT: At what point is it?

THE WITNESS: Well, at the time of the -- of course, at the time of the -- at the time of the original jurisdiction hearing he can have persons there to testify or to give information. He knows when it's going to be held in the original jurisdiction case, and if he wants to have --

THE COURT: Maybe my recollection is poor, and I will be the first one to admit it, but I had one recently, and the inmate appeared before the panel.

THE WITNESS: Uh-huh.

THE COURT: Later he was notified that his case had been referred to Washington for an en banc, and the

following after he was notified that his parole was dnied. Now, am I incorrect, or is my recollection faulty when I state that I don't recall anyone stating that he had a right to present evidence of any type from the one afternoon to the next afternoon?

THE WITNESS: What I'm saying is he can submit -- maybe I misled the Court -- he can submit any information that he wishes in his own behalf, is what I'm trying to say. Giving any information that he has additional to what was brought out in the -- in the panel hearing at the institution.

Q At the panel hearing, there might not be anything brought out, he might just be informed that his case is being referred --

A Well, he will know that his case is being referred for original jurisdiction, because he gets notification back.

Q All right, get's original jurisdiction?

A Yes.

Q That word doesn't connote organized crime, necessarily, does it?

A No, not necessarily, right.

MR. MAXWELL: Excuse me, your Honor.

THE COURT: Yes.

MR. MAXWELL: I haven't objected before this, but

with regard to the case that's before this Court, I think the witness has already testified that none of the petitioners in this matter were heard en banc by the parole board, they were heard in the normal manner. There was no referral to the regional director for any of these considerations, and while it may be relevant for some background material on the operations of the parole board, we're getting kind of in depth into this area when it doesn't apply to these present petitioners, this is an action only on behalf of these petitioners, and not as to possibly other members.

THE COURT: What about that, Mr. Wrenn? There's evidence here that one or more of these petitioners were given a special case designation because of organized crime connections, and they were not referred enbanc, does that mean that when the Bureau or you or someone else checked, they found out that they shouldn't be organized crime?

THE WITNESS: We felt in these particular cases that there wasn't enough information available to place that label on them to fit within our criteria for holding en banc cases.

THE COURT: Did you call the prison and say, "You

fellows" -- meaning the prison authorities -- "have labeled three men that we have reviewed special case, and we find that they don't qualify, why don't you take that label off"?

THE WITNESS: Well, we don't do that, because we're -- you know, we class that as their business, more or less, than ours.

THE COURT: All right. Go ahead, Mr. Curtis.

A I might say one thing concerning that -- the previous point, Mr. Curtis, that under 2.23, the original jurisdiction decisions can be appealed to the National Appellate Board. And, of course, at that point, if an appeal is allowed, administrative appeal is allowed, they can have attorneys, relatives or other interested parties there to speak for them.

Q Can you have an attorney before an en banc hearing?

A Yes, we have had attorneys before en banc hearings, yes.

Q Now, these cases were all handled in the way that you have described, isn't that correct? These cases were all handled --

A These cases that we -- that are before the -- we're before the Court on?

Q Yes.

A They were not handled en banc.

Q They were not handled en banc?

A No.

Q But up to that point, they had the stamp "special case" on their file, didn't they?

A Yes, all of them were special cases, designated by the Bureau of Prisons.

Q So it was triggered and the examiners looked at the case?

A Right.

Q And decided there that there was no -- not enough evidence?

A Decided, yes. Decided at that point that they did not feel that there was enough evidence to handle --

Q Were any inquiries made to the criminal division of the Justice Department in any of these cases that you know of?

A I don't know of any at the moment. I have three cases with me, I can't see where any of the three are --

Q You have reviewed the files in this case?

A Yes.

THE COURT: Any of the three are what you were cut off in your last statement.

THE WITNESS: The names?

THE COURT: No. YOu were completing a sentence.

A We weretalking about a number of cases in this group,

and as far as I know, there was -- the boarddidn't make any inqiry to the Justice Department.

Q Can an examiner take organized crime affiliations into consideration in deciding whether or not to recommend parole without recommending an en banc hearing?

A Yes, we could do the same -- yes, we could do that. We had these -- these particular cases were not considered en banc, these were continuations, of course, but the reverse could take place.

Q I'm sorry. I mean can an examiner decide that somebody is an organized crime case and yet not refer it to the -- for en banc consideration?

A No, no. Ifwe had decided definitely it was an organized crime case, we would -- we would send it en banc, original jursidiction, yes.

Q All right. So in this --

A Of course, the matter of degree also has something to do with it. We just don't -- you know, there could be one statement in the presentence report that this man associated with someone who is in organized crime. We'd probably just ignore that, you see, unless we had something more factual.

Q Could an examiner take somebody outside of the guidelines on the basis of organized crime without referring it to en banc consideration?

A We would take him outside of the guidelines on the basis of the severity of the offense, probably is what we would take him outside for, we felt the offense was so severe they should go outside the guidelines.

Q But not on the basis of organized crime affiliations?

A Not necessarily, no.

Q Not necessarily?

A We probably could, but it probably would be -- it would probably be -- be related to the offense itself more than the fact that it's organized crime.

Q What I'm trying to do is to understand the limits of the examiner's authority in these areas. Are they mandated when they see affiliations or with organized crime to send that case up?

A Yes.

Q For en banc consideration?

A Yes.

Q So they wouldn't use that -- if they did that, they wouldn't make a parole recommendation?

A The examiners also make an alternate recommendation if it's not considered for en banc, we make a recommendation considering en banc because we cannot make the final decision on that, but if it's not considered en banc, we also send along a -- a -- a secondary -- a tentative decision in case it's not

considered en banc.

Q Sothat in these cases, as far as the parole board was concerned, these petitioners were not organized crime cases?

A As far as I can determine, no.

Q And they were not reviewed --

A As organized crime cases, that's what I'm trying to say.

Q And they were not heard en banc?

A Not heard en banc.

Q And they werenot designated by any parole board as organized crime cases?

A No.

THECOURT: Mr. Wrenn, obviously, Mr. Curtis has a full understanding, you certainly do, but I get derailed here and there, and maybe you can put me back on the track. When a special case offender comes before the examiners at theprison --

THE WITNESS: Uh-huh.

THE COURT: -- and the examiners open thefile, and there is voluminous evidence of organized crime activity --

THE WITNESS: Yes, sir.

THE COURT: -- he's a real Al Capone, do they make that judgment at the time of the hearing and

automatically refer to Washington, or do they still ask permi ion to send the case en banc?

THE WITNESS: IN case -- in that particular case, there would be a recommendation to the board in Washington for possible en banc consideration.

THE COURT: All right. Now, let's say they open the file and they can't figure out why the man is special case, there's a statement there from an unknown informer that says: at one time, I saw the inmate light Al Capone's cigarette, and they say to each other: gosh, we don't see any connection here, really, for an organized crime designation, do they still report that to Washington, or is their judgment final at that stage?

THE WITNESS: IN that particular case, I think they would just ignore that, if it were that --

THE COURT: And proceed?

THE WITNESS: And proceed just normally, yes.

THE COURT: Incidentally, how many members are on the board?

THE WITNESS: There are eight members.

THE COURT: Now, en banc with adults, does it mean all eight hear it?

THE WITNESS: Yes, it means that there would

have to be a quorum there.

THE COURT: So that the board members that handle only juveniles and youth offenders also have a vote on this adult --

THE WITNESS: Yes, yes, yes, every one.

THE COURT: Now, with respect to the organized crime designation,isn't it a fact that a man may be labeled organized crime and the crime was not sophisticated, was not even serious, had no organizatio and no association with it, and might very well be an organized crime case?

THE WITNESS: Yes, it could be.

THE COURT: And on the other hand, a man could be involved in an extremely serious crime, say bank robbery, with violence and the evidence in the file discloses that he premeditated on the crime long and hard, stole many cars to -- as part of the plan, et cetera, et catera, et cetera, and not be classified organized crime?

THE WITNESS: That's also perfectly --

THE COURT: So, therefore, do you have some doubt about your definition of organized crime?

THE WITNESS: No, I think you have to take it within the conduct -- text of each case and you have

to make an evaluation, that's about the only way we can do it. And we take all information available and we try to arrive at some just conclusion.

THE COURT: What you haven't said about organized crime, although your definition could encompass it, but certainly not limited to it, is the so-called organization, a corporation, the Cosa Nostra, the Mafia type of connotation, you haven't said anything along those lines?

THE WITNESS: Well, that certainly could be a part of it, no question about it. And, of course, many times we get this information from the -- concerning this -- in the Justice Department itself when we ask for inquiries and occasionally from presentence reports and this sort ofthing. Certainly, this type of organization would be involved in our decisions.

THE COURT: Yes. For example, you could have a highly organized criminal syndicate in the State of Connecticut with tentacles across the entire country, and we'll say it's in the narcotics business, and they import pounds and they import pounds and pounds of pure heroin, and then they go to the next level, and that's where the merchandise is distributed to factories, and you keep working all the way down

till you get to the street, the junkey who is selling to insure his own supply. If we drew a chart of that organization, we would draw it with the same type of slots that big corporations like General Motor has, key individuals, then board of governors, all the way down to the junkey on the street, all the way down to the fellow who washes the car going out of General Motors, so even that little man who's selling to insure his own supply who's probably sick and diseased, could technically be a member of organized crime on the chart, could he not?

THE WITNESS: We would have to determine the culpability, as to what level he operated on.

THE COURT: Don't your own regulations recognize this and use the term "key member", or something like that?

Do you have that regulation in mind, don't they use the word "key" or --

THE WITNESS: I'm trying to look for it --

MR. CURTIS: I think in the old regulation they did.

THE WITNESS: Yes.

MR. CURTIS: Whether they do it now --

THE WITNESS: I don't see it in our newest

regulation.

THE COURT: Well, all right, if it's not there, I thought it was, I thought it said that the --

THE WITNESS: It says: regional director may designate certain cases to be within the original jurisdiction of the original directors.

MR. CURTIS: Your Honor, might it -- we do have the old rules, and I just wondered if we might ask him now whether these rules have been superceded by the new rules, in case they are still applicable, I'd like to get that on the record.

THE COURT: Why don't we clarify it?

THE WITNESS: September 24.

MR. DAVIS: These superceded in the old rules, so whatever is mentioned in the old rules is no longer applicable in this case.

THE WITNESS: Since September.

THE COURT: What year?

THE WITNESS: September of '73.

THE COURT: '73. All right.

MR. DAVIS: So that the old rules are no longer in use?

THE WITNESS: Right. There will be another change shortly.

and if he wants to open himself up to that opinion, and he's willing to express an opinion, I'm willing to hear it.

A. Well, I can express an opinion on it, yes, I think there's certainly differences, the Bureau of Prisons is -- their emphasis is on custody of whether a person should be placed with a codefendant, and this sort of thing. Where we're not -- we don't have this in mind whether a man is with a codefendant in an institution like the Bureau of Prisons does.

Q. Your determination is whether or not he should be released from the prison or not?

A. Or whether he's ready to go back in the community, whether he's been rehabilitated and this sort of thing.

Q. And there are just four categories of cases that go en banc, that being national security, organized crime, notoriety cases --

A. And long-term sentence.

Q. -- long term sentence?

A. 25 years or more.

Q. Now, whether a case would go en banc or not really has -- is it fair to say -- it has no relationship to the stamp because a national security case may not be stamped, but still go en banc?

A. Certainly, and 25 years or more certainly would, too

wouldn't be stamped.

Q So, then, the special case stamp does not play a role in the parole determination, as such?

A Not as such, no.

MR. MAXWELL: Nothing further.

THE COURT: You are excused, Mr. Wrenn. Thank you.

(Witness excused.)

THE COURT: I take it, so I'll have this clearly in my mind, Mr. Wrenn, that the examiners at the prison can reach a judgment that a case should not go en banc, and then follow through and rule on the parole or recommend on the parole, or they can recommend that it goen banc, and even if they recommend it, Washington still has the discretion to refer it back and say: we don't want it to go en banc?

THE WITNESS: That's true, sir.

THE COURT: Or they can accept it?

THE WITNESS: That's true.

THE COURT: Okay.

MR. MAXWELL: Just one or two questions.

REDIRECT EXAMINATION

BY MR. MAXWELL:

Q Mr. Wrenn, the board of parole, is it fair to say that the board of parole has a different goal in mind when they're considering a case for organized criminal activity as the Bureau of Prisons, you are not concerned with what the Bureau of Prisons --

MR. CURTIS: I object, your Honor, I don't know whether the witness has been qualified to speak for the Bureau of Prisons.

THE COURT: Well, he's an expert in the field,

LAWRENCE A. BUTLER, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you please state your name and address for the record?

THE WITNESS: Lawrence A. Butler. I live at R.D. 3, Box 100, Lewisburg, Pennsylvania.

DIRECT EXAMINATION

BY MR. MAXWELL:

Q Mr. Butler, are you employed?

A Yes.

Q By whom are you employed?

A By the Federal Bureau of Prisons.

Q Mr. Butler, what are your current duties?

A I'm the executive assistant to the warden of the United States Penitentiary at Lewisburg.

Q And when did you assume those duties?

A March the 3rd, of this year.

Q Now, prior to March the 3rd of this year, what were your duties then, Mr. Butler?

A I was chief of population control section in the Bureau of Prisons central office, Washington, D.C.

Q And for whatperiod of time were you there?

A I served in that capacity from July 1st of '73 until March 3rd of this year.

Q And prior to that, where were you in the Bureau of Prisons?

A I was in -- still in the central office. I was community programs officer assigned to the community relations division in the Bureau of Prisons.

Q Now, Mr. Butler, in your capacity as chief of the population control -- is that population control center?

A Section.

Q Section -- what were the -- what were your duties and what are the duties of that section? What did that section actually do?

A Well, they handled several things, one of which was the coordinating the transfer of inmates between institutions by our bus system. The designation desk, as we refer to it, came under that section. This is the individual who is responsible for designating which institution a man was sent to once he was sentenced by the court. A man or woman. Also handled the special offender list, was -- was handled in my section.

Q So would it be fair to say, then, that the section which you were in charge of was the section that was responsible for an inmate having his -- being placed on the special offender list and having his file stamped "special case"?

A. The ultimate responsibility was with that section, yes.

Q. And you were in charge of this section?

A. Yes.

Q. Now, Mr. Butler, what actual unit in the population control section handled the special offender list and the special case designation on the file?

A. During the -- during the period of time I was assigned there I handled the special offender list personally.

Q. Now, Mr. Butler, are you familiar with the Bureau of Prisons policy statement on special offenders dated April the 30th, 1974?

A. Yes, I am.

Q. And did you have anything to do with its being written?

A. Yes, I helped to write it.

Q. Now, prior to this policy statement appearing in writing, were there any written guidelines concerning special offenders and the special case designation or stamp?

A. Some general guidelines, yes.

Q. Now, how -- current policy statement, the current written policy statement, which is -- was -- dated April the 30th, 1974, how does that relate to the prior policy of your section which you were in charge of?

A. In reality, it merely formalizes and sets -- sets

down in a policy statement the practices that had been followed ever since I've been in the Bureau.

Q How long is that?

A I've been with the Bureau of Prisons since January 1st of -- no, I'm sorry, January 18th of 1973.

Q Now, Mr. Butler, during the period of time that you were in charge of this section, would you go through the procedure that was used by the Bureau of Prisons in placing an inmate on the special offender list, and then having his file marked with whatever marking you did use, would you tell us what marking that you then did use?

A The procedure started in the institution where the inmate was assigned to serve his sentence. When a man goes into a -- man or a woman -- goes into an institution, they are seen by a classification team, their records are reviewed by a classification team, they're classified for various jobs, type of quarters and that sort of thing, and their -- a case worker is the member of that team, the individual's case worker.

As a general rule in all of the institutions, the individual case worker upon reviewing the file would make the determination that the man should be classified as a special offender for any one of a number of reasons. He's required to submit this to his superior, which -- which would be the chief

of classification in parole in the institution that was required to send it on to the Bureau.

The Bureau, my section, from July on, would review the recommendation of the institution, look at the file, the central file, as you already know, there are two files on each individual, institutional file and a central file. The information is basically the same in both files. And then a decision would be made whether: yes, we'd place him on the special offender list in accordance with the institution's recommendation, or: no, we don't think that there's quite enough here to put the man on the special offender list, and if that was the decision, the institution is notified that he's not being placed on the special offender list based on the information that we have available, and he would not be placed on the special offender list.

Q Now, taking the situation where the institution recommends placement on the special offender list, sent to your section in Washington, you reviewed the pertinent matter and concur in that recommendation, what would take place from that point?

A We would make up a card on the individual that is kept in the file in the population control section. We didn't notify the institution that we're accepting their recommendation. By not contacting the institution, then they know the

recommendation has been accepted and they stamp the file accordingly. And we stamp the file in the Bureau, the central file, and the file -- the stamp is just a stamp that states: "This inmate may not be transferred without approval of the central office, Bureau of Prisons," and it cites the policy statement which authorizes that, and I can't recall the citation right now.

Q Mr. Butler, are there any occasions where your office would initiate placing someone on the special offender list?

A Yes.

Q And what would take place and how would that come about?

A Well, in the event the central office in the Bureau received some information that we felt necessitated a particular individual -- individual being placed on the special offender list, we would notify the institution housing this individual that he was being placed on the special offender list and that they should stamp their file accordingly.

Q Now, Mr. Butler, a moment ago in your testimony you indicated that the -- there were a number of reasons for being placed on the special offender list, and there are currently eight classifications, I believe, and prior to this there were some other reasons, they were more pointed, so to speak, can you tell us what the reasons were and why these certain

recommended such placement, it went to Washington for Bureau of Prisons approval, and it was denied. Are you aware of that?

A I read that in the file, yes.

Q Having worked in that section, can you tell the Court how that operated with regard to Mr. Ingoglia?

A Well, I was not there at the time he was denied, but the normal procedure would be for the case management people in the Bureau of Prisons who would receive this recommendation from the institution -- they would review the file, they would come to the population control section and inquire as to whether or not the man was stamped by us as a special offender and for what reason, and look at the card that is maintained in that section. That would be the normal procedure.

THE COURT: Well, how do you prevent, or do you, attempt to prevent arbitrariness and just plain mistake? For example, what if a codefendant who turned informant was dead? He died in a natural death five years ago, how do you ever determinethat a man should be taken off special case?

THE WITNESS: If that was the sole reason for the man being on the special case -- and there are a lot of if's -- if that information -- to us in the Bureau of Prisons, then the reason for him being stamped as a special offender would no longer exist.

THE COURT: That's the whole point of this case, how does a man get information to you to enlighten you or to have a chance to get his name off the special case?

THE WITNESS: Your Honor,there are many ways a man can do this. He has information that he feels is pertinent to his particular case, he can go to his case worker. If that doesn't do any good --

THE COURT: A case worker testified before me he doesn't even tell a man he's a special case, the way he has to find out is to look over his shoulder and peek at the case file when the man looks out the window or something. Is it your testimony that the case worker should tell an inmate that he's a special case and be heard on it?

THE WITNESS: That would be an opinion, your Honor.

THE COURT: Well, you are the top man. Or you were the chief of the whole population control thing, is it your testimony in this courtroom that a case worker should notify an inmate that he's a special case, and say, you know, "This is why you are a special case. You may disagree, but this is why, and if you have a change of circumstances, you can always

come in and let me know and I can hear you on it," is that your opinion?

THE WITNESS: It's my personal opinion, your Honor, that if a man's a special -- stamped a special offender, he should be told so, and he should be told why; I find nothing wrong with it. We -- you know, we naturally can't say that we don't make mistakes. Everybody makes mistakes. I would hope that there is no -- no arbitrariness in the procedure by a case worker or anyone else, I would certainly hope that.

THE COURT: But don't you feel that one way to avoid arbitrariness -- but no one sets himself up, I don't think, as infallible or omnipotent -- is to hear two sides of the question? Isn't that kind of what we do in life? We kind of say: well, I'm not infallible, I'm not omnipotent, but at least I have heard both sides and I have formed a judgment. Right or wrong, at least, I formed an opinion based on fact.

THE WITNESS: Well, I really can't quarrel with that -- with that statement at all. I presume what you are getting at is that -- in conjunction with the question about whether or not the man should be told -- do I feel that he should be told and should have a chance to say: well, hey, wait a minute,

that's -- that's not me, that's my brother that you are talking about.

THE COURT: Or my father.

THE WITNESS: Or my father.

THE COURT: I'm junior, not senior.

THE WITNESS: That's right. I see nothing wrong with telling a man he's on the special offender list and letting him have his say there at the institution when the classification is made. That's my personal opinion. I see nothing wrong with that. I do feel that the system is -- as it is operating right now -- is very good and is successful. We're using as a basis for a decision the same reports that are given to the courts prior to sentencing, and then forwarded on to the Bureau when people come into our custody, and the reports of the investigative agencies, if they're available, and the report on convicted prisoner if he comes from the U. S. Attorney, when it's available.

THE COURT: Don't you think, though, from what you have heard in this courtroom and what your experience tells you, that the one area -- maybe there's two -- but this organized crime designation that proves troublesome? I mean we all understand,

do we not, that if there are codefendants, say, in a bank robbery case, and one got 19 years as a direct result of his partner testifying against him, and the partner gets, say, 7 years, because of his cooperation, well, I guess everyone would understand you certainly don't want those two men in the same prison, you want to keep your eye on them, maybe long after Mr. Butler gets a promotion, Mr. Jones is coming in and doesn't recognize the name, so somebody has to put something on, a stamp to make sure that successors recognize that these two men should not be put in the same prison.

And I suppose notoriety cases, that, you know, makes sense. The public doesn't want to see a well known criminal in the community, on the street on a furlough five days after he's sentenced. Somebody might say: well, it looks like he paid somebody off or he has influence, and so forth and so on.

But don't you think that this whole area gets a little murky when we talk about organized crime? Because, in principle, what you are saying is correct, but no one's really been able to define it for me, and we have had some real good experts on the stand.

For example, your definition, can you think of one case that involves more than one man in any crime that wouldn't fit your definition that you gave in this courtroom?

THE WITNESS: You mean organized criminal activity?

THE COURT: Right. In other words, there was a crime committed by more than one person in an organized fashion, I think is what yousaid. Well, I'm asking you can you think of one crime committed by more than one person that doesn't fit your definition? Or could fit your definition? Don't you think that anytime two people get together to commit a crime that it's organized right at that point, or it could be organized?

THE WITNESS: Well, I supposeif you carried the thing to the nth degree, you could say that anytime two people sat down to plan to do something, they're organized it, and so far as the definition of organize criminal activity that the Bureau of Prisons has operated under, no, that would not necessarily be organized criminal activity.

THE COURT: What would be?

THE WITNESS: Well, we think in terms of keeping

-- several people being involved in activities that require a certain amount of organization skill to carry them off. You mentioned earlier the organization, if it existed in Connecticut and dealt in narcotics and the tentacles reached out and touch a lot of people.

THE COURT: A syndicate?

THE WITNESS: Yes, sir.

THE COURT: Do you think it is the criminal syndicate level, or do you think it need not get that?

THE WITNESS: An awful lot of people get hung up on this Mafia and Cosa Nostra business, and I don't personally. I'm not sure that there's all that to the Mafia and Cosa Nostra, and some people say they're synonymous, I don't say there's all there that a lot of people believe is there, so I'm not talking about a syndicate in that regard. But any group of people who get together and decide to perform a criminal act that takes a good deal of skill, a good deal of organizational management, and as a general rule, these things profit them a great deal, this is the type of thing I think of when I talk about organized criminal activity.

THE COURT: I don't mean to chip away at you, and I certainly won't, but let us assume that the stalwarts of our business community in the -- in industry get together and say: let us give a contribution contrary to law to a public official. And they meet secretively, and they have elaborate plans and fake bank accounts and fake names and cash, washed out, laundered out in Mexico, and all this and they get caught. And the judge says: well, this is a serious thing you have done here, and he give them a year in prison, do you think their case is going to be marked "special case"?

THE WITNESS: Yes, sir.

THE COURT: You do?

THE WITNESS: Yes, sir.

THE COURT: Because it's organized criminal activity? Or because of notoriety?

THE WITNESS: Both. To me -- well, the notoriety is self-evident. To me, it is also organized criminal activity, and although I'm not a lawyer, I -- I don't think that -- maybe the laws on the books aren' quite as stringent as they should be on that type of activity. WE have recently had some people who have been engaged in things that you have just described,

and they were stamped, also, so as not to be transferred without Bureau approval. This is -- that's the whole thing. This stamp just says: not to be transferred without Bureau approval. It doesn't carry any other connotation to an individual's involvement in programs or anything else.

THE COURT: My last question, because counsel are very competent and I don't like to get involved in their examination. There is a section on transfer, is there?

THE WITNESS: There is a policy statement on transfer, yes, sir.

THE COURT: Yes, a policy statement and regulation on transfer?

THE WITNESS: Yes, sir. I can't cite the number.

THE COURT: Right. But nowhere in that particular statement is there anything about organized crime, is there?

THE WITNESS: No, sir.

THE COURT: Do you recall?

THE WITNESS: Not to my knowledge.

THE COURT: They talk about codefendants and they talk about escape, maybe they talk about notoriety, I don't remember, but I don't think they mention

organized crime?

THE WITNESS: I don't know that -- and I can't recall the statement exactly -- I don't know that it relates particularly to any type of a crime. It does specify that people are not to be transferred without Bureau authority and sets forth what needs to be done in order to transfer them. I honestly can't recall just how it relates to it.

MR. MAXWELL: Well, we'll find one if there's one in existence.

THE COURT: Go ahead, Mr. Maxwell, sorry to interfere in your examination.

DIRECT EXAMINATION CONTINUED

BY MR. MAXWELL:

Q Now, with regards to Mr. Catalano and Mr. Ingoglia, are you familiar with the offense which they were convicted of?

A Yes.

Q And how does that offense fit into the definition of organized criminal activity? As you have given it?

A In my opinion, it fits it like a glove.

Q Would you tell us how?

A Well, there were several people invclved in selling forged securities, were not only crossing state lines, but were crossing national boundaries, it was international in

the community. A great many things will play a part in it.

Q Who does this individual report to who is in charge of the regional community for treatment centers?

A Well, you have a regional manager for the community programs division. And then he has, according to the size of his region, X number of community programs officers scattered throughout the area. They report to -- the regional manager answers directly to an assistant director, a man who carries an assistant director rank, who is in Dallas, Texas at this time. The headquarters for the community program service is in Dallas, Texas.

Q Does the population control section have any control over placement in the CTC's?

A No.

MR. MAXWELL: I don't believe I have anything further.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. DAVIS:

Q Mr. Butler, I believe that early in your direct examination you testified -- I believe your words were that there was no question but that people who are involved in organized criminal activity would come under special case, is that right?

A Barring mistakes, I also said that we do make mistakes

and we miss some occasionally.

Q I understand that. Then you described the offense in which Mr. Catalano and Mr. -- and Mr. Ingoglia were involved, and you said that that fit the definition like a glove?

A As far as I'm concerned, yes.

Q Of your own knowledge, do you know what the role of Mr. Catalano was in that offense?

A From the file. Personally?

Q Do you know, for example, how much money he ever came into contact with?

A I don't recall the figure. I recall reading the file and what the -- what the crime entailed.

Q Do you know that figure as to Mr. Ingoglia?

A No.

Q Is it possible that in an offense which would fit the characteristics of organized criminal activity, or what -- what that phrase means to you, that there would be people who participated in that defense -- offense whose own characteristics would not fit that activity? Is that clear?

A Not really.

Q Well,using the hypothetical that the Judge offered to Mr. Wrann, do you see any reason to treat differently the people at the top of the pyramid, the brain of the octopus, and the people at the end of the tentacles of the octopus?

A. I think you definitely have to look to the culpability of the individual when you make a determination.

Q. At the time, which I guess would be early '73, roughly, that Mr. Catalano and Mr. Ingoglia and Mr. Fontana were designated special case, were there at that time any sources of guidance to which a case worker or anyone else could turn to see whether these individuals were a proper subject forthe designation?

A. I presume that you mean were there any directions for the case workers to look at culpability? There was a memorandum in effect with a list of categories that -- where an individual could be placed on special offender list if he was involved in crimes in these categories. I don't know of any -- any written directions as to a case workers looking at culpability, I don't know whether that's responsive to your question or not.

Q. It's certainly partially responsive. Do you know of any memoranda or other documents which would help a case worker decide on the basis of anything other than culpability?

A. Just the memoranda and the attached list that I just described.

Q. You offered your opinion to the Judge a few moments ago that you thought an individual should be told that he was being made a special case and that he should be told why he's

being made a special case. At the time the petitioners were made special cases, do you know whether it was the policy and the normal procedure of the Bureau of Prisons and its institutions to make sure that that information was conveyed to the inmate involved?

A I don't know whether it was a policy. I don't recall the dates that these two gentlemen were placed on special offender list.

Q It would have been early 1973, late 1972.

A No, I don't know whether it was a policy. I don't think that it was. I came with the Bureau on January 18th of 1973.

Q Is there any provision for such notice made in the new policy statement which you have just told us were made effective March -- rather, May 1st of this year?

A I do not believe so. I don't recall seeing it.

Q Do you know whether it was ever thepolicy of the Bureau to notify someone after he'd been made a special case?

A No, I do not.

Q Do you know whether it was the policy of the Bureau of Prisons to allow an inmate the opportunity to challenge either the designation or the information on which the designation was based?

A Do I know whether it has ever been the policy?

Q Yes.

A No, I do not.

Q Do you know whether either at the institutional level or at the Bureau of Prisons level in Washington, anyone -- it was the policy and normal practice for anyone to solicit information from the inmate in regard to the classification?

A No, I do not.

Q Do you think it's fair to say, based on your experience with the designation process, that when an inmate -- if an inmate were to find out that he had been made a special case, thatit was normally either after the designate him had been made, or after the designation itself had in effect been made?

A I would think that probably he would not findout until after the designation had been made.

Q So if that's true, do you think it would then be fair to say that if an inmate wanted to take advantage of whatever procedures there were for challenging the designation, that his position was one of having to get the appropriate decision makers in the Bureau of Prisons to change their minds as opposed to being in the position of helping them come up with the necessary information to make the initial determination?

A I suppose that's a true statement.

Q When the appropriateindividuals in the institution

forward to Washington, D.C. a request to add someone to the list of special offenders, is there any guidance to that individual on what information he should forward with the request?

A Wait a minute. You are talking about the case worker who makes the initial determination? Is there any guidance to him?

Q Is the case worker the person who forwards the request to Washington?

A Well, the case worker makes the initial determination I would say, in all institutions, at least in most institutions perhaps in some, because of their local operating methods, a whole team would be -- classification team would be involved, but, yes, they are -- there -- they are required to -- to forw with the -- with the recommendation a synopsis, at least, of why they're making the recommendation.

Q Are they required to forward the documents -- for example, if -- if it were a letter from an FBI agent which triggered the process in the case worker's mind, would he be required to forward that letter?

A Not necessarily that letter, there's a report form th they fill out stating that Joe Dokes -- we're recommending placing Joe Dokes on special offender list because of, and then they'll just outline the reasons.

Q Is there not on that form also a paragraph labeled: associates?

A Yes.

Q Is there any guidance to the case worker -- I take it it's the case worker who fills out that form?

A Yes.

Q Is there any guidance to the case worker on how he should choose individuals to list as associates?

A I don't recall whether the memorandum we've discussed here earlier specified that, you know, you look in such and such a report for the individual's associates. I don't recall that. But that is the general practice. The people at the institution take the information from the same reports that we review in the Bureau.

Q If you were to receive in Washington thatform, and the only associated listed on that form were indicated by his name, his institutional number and the fact that he was also a special -- he was also on the special offenders list, would there be any inference that you would draw from that, would that weigh at all in your deciding whether to approve or reject the institution's request as to this inmate?

A If I was making the decision, that in and of itself would not be enough to make a man a special offender.

Q But would it be a factor?

A Coupledwith other things, it might be. Again, it depends on the individual case, you have to review the individual's entire file.

Q Is the administrative appeal process --

MR. DAVIS: -- could I have Petitioners' Exhibit 1, please?

Q After the designation has been made, is the administrative appeal process the only route that the prisoner has available to him to get the designation special case removed?

A The administrative appeal process is a brand-new procedure, if we're talking about the same thing. It was -- it was instituted in three institutions as a pilot program, and then just in April, I believe, went into effect Bureauwide. Are we talking about the same process now?

Q Let me show you Petitioners' Exhibit 1, and you can tell me what this represents to you.

A Yes. This is the administrative remedy process that has gone into effect Bureauwide.

Now, that is not the only way that an inmate can communicate that he wants the special offense business taken off his file. Every institution has a PMB, a prisoners' mail box, and they can write to the Bureau, they can write to congressmen, they can write to anybody they want to write to,

and they can write to us, I say -- while I was in the Bureau, that happened. They would write in and say: "Hey, I found out I'm on the special offender list, and I don't believe I should be," and findout why.

Q And what do you do when you receive such a letter?

A Review the file and see. I can't -- I never profess to remember all of these people who were on the special offender list, so you pull the file, pull the card, look at it, find out, well, is the guy right or is he not right.

Q And you respond directly to the inmate?

A He is answered, yes. And the letter is sent to the inmate.

Q And in such a letter, is he informed -- assuming that your decision is that he deserves to be on the special offender list, is he in that letter informed of why he is to be kept on the list?

A As a general rule, it was just -- he was told that you are -- "In response to your request, your file has been reviewed, it's felt that you are properly designated special offender," and that's it.

Q So he's given no other information than that?

A Not to my knowledge.

Q If the inmate is invited to or for some other reason elects to follow the appeal process represented by Exhibit No.

l, to whom does the initial appeal go to at the institution?

A Are you speaking of this administrative remedy right now?

Q Yes.

A It goes to the warden, and the warden has fifteen days to answer, fifteen or thirty days to answer, then it can go further, I haven't been involved with this administrative remedy procadure, really, at all yet, because we just got it in Lewis Penitentiary.

Q Do you know whether the warden at the institution has been involved in the original decision to designate someone special case?

A I would seriously doubt it.

Q And is it true that the next appeal goes to an office in Washington, D.C., if the appeal at the institution is turned down?

A To the director, everything goes to the director, he doesn't necessarily handle it personally, but everything goes to him.

Q Would it be handled by the same -- if it's a letter of handled -- an appeal from a special case designation,would it be handled by the office which was originally involved in making the special case designation?

A I really can't say, this has all taken place since I

left the Bureau.

Q The form which I showed you before was one filled out and processed by Mr. Catalano. The response which he received was: "You have been designated a special case by the Bureau of Prisons central office because information from investigation reflect a probable link with organized crime activities."

There is more, but in regard to this, it is not relevant, do you think that's -- that's typical of the kind of answers that are -- that are given in this process?

A I could hardly testify to that. Not having been involved in the process.

Q Do you think under your understanding of Bureau policy that that answer adequately gives Mr. Catalano all the information to which he is entitled?

A I can only give a personal opinion on that. Again, because I haven't been involved in the administrative remedies procedure at the Bureau level at all. Not even at the institutional level yet. Because we just started it. But it tells him why. There's been some question as to individuals being told why they're designated special offender, and this does tell him why.

Q And it is your opinion that under prevailing Bureau of Prisons policy, that's an adequate answer -- explanation of why he is a special offender?

A. I would think so.

Q. As a matter of normal practice and procedure, is there anyone, either at the institutional level or Washington, whose responsibility it is to check the accuracy of the facts on which the allegations are based?

A. In the Bureau they have a similar policy to the -- or similar procedure to the board of parole in that if there's some question about an individual, we can query the organized crime section of the Department of Justice. They keep computerized data on people in -- by areas, according to where the strike forces are working. They keep computerized data on people, and if you want to query that section of the Department of Justice about an individual from a certain area, they will come back with information to tell you whether, you know, you are right or wrong.

Q. Do you know whether such a check was, in fact, made on any of the petitioners in the present action?

A. I do not. I wasn't there at the time they were placed on the list.

Q. Do you know whether as a matter of normal procedure there is a regular review made ofpeople who are special cases to see whether the information still justifies the designation?

A. A periodic review?

Q Yes.

A There was not prior to my leaving there in March, there was not -- reviews were not set up on a periodic basis. They were reviewed on an as-needed basis, when a request came in, such as an PMB letter from an inmate or an inquiry from an attorney or congressman or something of that nature.

I believe the new policy statement does set up review procedures.

Q You did say that one of the reasons for requiring maintenance of these special case records in the central office is that only the central office knows where everybody is, is that right?

A That's right.

Q It's true that I -- I guess you said in July of '73 you were chief of population control?

A Yes.

Q Is it true that Richard STone was the codefendant who was thought to need protection against Mr. Ingoglia and Mr. Catalano?

A I believe that was one name, Richard Stone, I've had another name. Slamowitz or something like that, I don't recall it exactly.

Q Would the chief of population and control normally become aware of the release from prison of a man whose protection

was involved?

A. Not normally. The system -- well, the system is not perfect enough that when a man is released from an institution that at expiration of sentence or by parole or something of that nature that notification does -- did not at that time come into us on these cases.

Q. Do you know whether the chief of population and control or his delegate would try to keep track of where such a person was when he left prison?

A. No. They would not.

Q. But wasn't it your testimony that one of the reasons you might keep a special case designation on an inmate after the reason for -- after the release of the inmate whose custody required protection was because you didn't want to release him either on a furlough or to a CTC in the city where that individual needing protection might now be living?

A. That's right. But you didn't work from the individual who was released. You worked from the individual who was still in custody. If a request came down to transfer him to a CTC or grant him a furlough, you then checked, why is he on special offender list, got to keep him separated from Richard Stone or whatever the name may be, then you go to the central file and find out where is Richard Stone? Is he in DAnbury, or is he in Eglin Field I think that's where the guy was at one time,

or was he cut, and if he's out, what does his program show, what address was he going to live at and what was his program?

Q Would that check be made as a matter of course?

A Yes. Before -- while I was there, yes.

Q Do you know -- I'm sorry.

A As a matter of course, if a -- well, if a request came in for Mr. Ingoglia or Mr. Catalano to be sent to a CTC, if you want to talk specifically about these individuals, if a request came into me to send them to a CTC and the file indicated that there was a protection problem there between these two people and Stone, then I would go to the microfish and find out where is Stone, is he still in the system, if he is, it would show in the microfish, if he's shown as not active, then I'll go to the computer and find out where is he, and that has a bearing on the decision, yes.

Q Do you know whether such a check on Richard Stone was made for any of the applications that --

A I wasn't there at the time. I don't know.

Q During your tenure at Lewisburg, did you know an inmate or become acquainted with an inmate by the name of Vincent Sabellico?

A Sabellico, I know the name, but I don't -- I don't recall the inmate.

Q In reviewing the files of Mr. Catalano and Mr.

Ingoglia, did you come across the name Sabellico as one of their codefendants?

A. Perhaps that's where I know the name from. I don't have a clear recollection of why I know the name, but I do -- the name's familiar.

Q. Do you know whether Richard Stone gave the same testimony against Vincent Sabellico that he did against Catalano and Ingogilia?

A. No, as I said, I can't recall this much about Sabellico.

Q. Do you think if he had given the same testimony, that he would have been a special case, too?

A. I would think so, unless somebody slipped up.

Q. Do you think that if this protection of codefendant were a good enough reason to keep Mr. Ingoglia or Mr. Catalano from going to a Halfway House in New York that that same reason would be good enough to prevent Mr. Sabellico from going?

A. Let me back up a minute.

Q. Sure.

A. Are you saying that Sabellico gave the same testimony against these two gentlemen as Stone?

Q. No.

A. Stone did?

Q I'm asking you to assume that Stone testified against Sabellico, Catalano and Ingoglia.

A Then, in my judgment, yes, that same criteria would apply and if Sabellico was not classified as special offender, it's one of those mistakes we talked about earlier.

Q Is there anything in the system programmed to catch those mistakes?

A Not really. It depends on the human element. Reading his files.

Q Could you expand on that?

A We don't have a computer that would kick these things out if someone was missed. When a file is read and a man is placed on special offender list because he should be separated from A, B, C, D and E, somebody apparently just missed E, one of the people involved. It's human error.

Q Is it true that when Donald Fontana was made a special case it was on the belief that he had been -- he was involved in some way in organized crime?

A Speaking from the record, I can only say yes, that's true. I wasn't involved in approving Donald Fontana. As I said earlier, I did recommend that he be removed.

Q When you made your recommendation that he be removed, did you have before you any information which was not before the person who made the suggestion to designate him in the

first place?

A. Not to my knowledge. I think I had the same information available that -- that whoever placed him on the special offender list had.

Q. Do you know how long Mr. Fontana had been on the special case list when you made your recommendation?

A. I don't recall. I know that when I read the file I felt that while there was some indication, that it was just a little too nebulous for me.

Q. You offered as a reason for not having made -- when I asked -- excuse me. When I asked you to accept my assumptions about Mr. Sabellico, you said if Mr. Sabellico hadn't been made a special case, it was because an error had been made in his case, is that right?

A. I would assume that, yes. I don't recall that much about Sabellico.

Q. I understand that. Isn't it true, though, that there's another explanation, that it's true that in each case someone went through the files, right? Someone went through Ingoglia's file, someone went through Catalano's file, someone went through Sabellico's files?

A. You have to assume that.

Q. And isn't it just possible that the judgment made in going through Sabellico's file was the proper one?

A You are asking me to speculate on a file that I don't have any recollection of. I suppose if, you know -- if -- you can assume that -- that it was a proper judgment. It depends on how -- what you want to assume, I suppose.

Q Do you know whether the designation for Donald Fontana was initiated on the basis of a normal file review, or whether it was triggered by some information received from outside of the normal process?

A As I said, I wasn't -- I did not take part in the designation of Donald Fontana to the special offender list, I did upon review recommend that he be removed from the special offender list.

Q And on your review of the file, was there any way for you to tell how the designation was initiated?

A It was standard -- just like all the other files, there was a from from the institution stating that -- placed on special offender list because of some allegation of connection with organized crime activities. I just felt that the explanation was a little too nebulous and I went through the entire file and I couldn't find anything stronger, as I testified as few moments ago, there was some good indication, but I like things pretty concrete.

Q Did you also review the file of Mr. Ingoglia and Mr. Catalano?

A I have reviewed them, yes.

Q Were you able to draw the conclusion from that review -- and please tell me if I'm wrong -- that the designation in each of their cases was triggered by a letter from the U. S. Marshal, and not by a normal file review?

A No, I didn't -- I didn't draw that conclusion at all. I don't believe I said that.

Q No, I was asking whether it was true. Is it true that for inmates who are not marked "special case" that the warden of the institution retains authority to release that inmate on a social furlough?

A Yes, within the guidelines set forth by the Bureau.

Q Yes. Is it also true that an inmate who is a special case may not be granted an unsupervised social furlough without the persmission of -- is the case manager -- case management branch of the Bureau in Washington?

A Yes.

Q Are you familiar with the Bureau of Prisons policy statement on furloughs?

A I don't recall it verbatim.

MR. DAVIS: May I have Exhibit No. 5, please?

Q Do you know whether the policy statement contains a statement to the effect that for persons identified with large-scale organized criminal activity, furloughs may be

considered, quote, "Only for the most compelling reasons," unquote?

A I recall a statement similar to that, I'm sure you read it verbatim.

Q I take it your -- part of your job is to be able to interpret Bureau of Prisons policy statements?

A I don't get involved in these things specically all the time. On occasions, I will get involved in them, and if so, I'll interpret them.

Q Do you think you are able to explain to me whether that requirement that the inmate shows compelling circumstances makes it harder for a special offender to get a furlough than for one who is not a special offender?

A Let me see if I understand you completely. You simply want to know whether or not being designated special offender would make it a little more difficult for a man to get a social furlough than if he was not designated a special offender?

Q Or a lot more difficult, if that were the case.

A I would have to say yes, it would make it more difficult in the context that the decision is not made on the spot by the institution. It has to go into the Bureau, there's paper work involved.

Q When the decision is made by the Bureau, do they consider -- do they react to the phrase "compelling circumstance"

and look for a showing of greater need than whoever makes the decision for a normal inmate would look for?

A. I haven't been involved in the decision making in the case management section, so I couldn't honestly say whether they give that any special weight.

Q. If an individual is not a special case, however, and if the warden grants a furlough, he can go out on a furlough?

A. Yes.

Q. So if it's true that the warden of Danbury approved a furlough for Mr. Catalano, and Mr. Catalano hadn't been a special case, he could have gone out on that furlough?

A. Yes.

Q. And if that were forwarded to the Bureau of Prisons and the Bureau of Prisons -- and that forwarding was done only because he was a special case, and the Bureau of Prisons said: no, would it then be fair to say that Mr. Catalano was deprived of the furlough because he was a special case?

A. At least because of the circumstances that made him a special case. I'm not trying to deal in semantics. That's just --

Q. Isn't it true that it's the stamp "special case", and not the underlying circumstances which requires forwarding the thing to Washington?

A. Yes, that's what triggers the forwarding of the

information to Washington.

Q So it's possible that someone who was convicted of an offense similar to Mr. Catalano and involved larger amounts of money, but who had not been made a special case, it's possible --

THE COURT:: Now we're getting speculative, and I am not interested in possibilities. Why don't we stick to his expertise? He's several times said he wasn't in that division, doesn't know very much about it.

MR. DAVIS: May I have a moment to consult, your Honor?

THE COURT: Yes.

Q Someone who is not a special case is recommended by the institution for transfer to a community treatment center, you testified that he needs institutional approval and he needs the approval of a regional management branch or something?

A Community relations regional manager.

Q Now, if a man such as Mr. Ingoglia with a special case would that approval be sufficient for him, or would there be an extra step?

A As I have already testified, all special cases go to the Bureau. The regional manager of a particular region doesn't know where everybody in the system -- doesn't have the

records at his fingertips as to where everyone in the system is. Therefore, a stamped case goes to the Bureau. Any case stamped or -- would not stamped, stamped, doesn't go to the region, but nonstamped would still have to be approved by the region. The institution is not the last word in either case as to whether a man goes, actually, physically goes to a CTC.

Q But the last word for the nonspecial case is not the last word for the special case?

A I suppose you could say that. A stamped case goes to the Bureau and the other goes to the region.

MR. DAVIS: I have no further questions.

THE COURT: Anything further?

MR. MAXWELL: Nothing.

THE COURT: You are excused --

THE WITNESS: Thank you, your Honor.

THE COURT: -- except for one question.

THE WITNESS: Yes.

THE COURT: Do you know how many men are on special case throughout the system?

THE WITNESS: Yes, sir, in round figures, five hundred and some odd stamped cases out of 23,500 inmates in the system, I believe.

THE COURT: Approximately what date would that be?

THE WITNESS: Roughly in February of '74. Roughly.

I think we did a tabulation somewhere around January or February.

THECOURT: Fine. Thank you very much.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: Do we have any more witnesses?

MR. MAXWELL: No, your Honor, we do not.

MR. DAVIS: No, your Honor, but we'd request to be heard.

THE COURT: I can't hear you today. What do you want to be heard on?

MR. DAVIS: The motion for release of Mr. Ingoglia.

THE COURT: I'll hear you some other time, I'll hear you Tuesday.

MR. MAXWELL: I believe the Clerk's Office put out a schedule on that,and my understanding, a memorandum was to be submitted by the petitioner as of the 21st, and the government was to submit a counter-memorandum by -- I believe it was the 28th, and then it was supposedly -- if a request was made for oral argument, it was supposed to be made before May the 31st. I haven't received the petitioners' memorandum, unless they want to rely on the motion that they

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United States District Court
District of Connecticut
FILED AT NEW HAVEN
4-30, 19
Sylvester A. Markowski, Clerk
By: Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PASQUALE CATALANO, et al.,
Petitioners

v.

UNITED STATES OF AMERICA, et al.,
Respondents

CIVIL NO. B-883

A F F I D A V I T

I, BERNARD R. WRENN, being duly sworn, depose and state that:

I am the Chief Hearing Examiner of the United States Board of Parole, with offices at 101 Indiana Avenue, NW., Washington, D. C. I have examined the files of Pasquale Catalano, Register Number 77032-158; John Ianelli, Register Number 77795-158; Charles Stein, Register Number 78081-158; Donald V. Fontana, Register Number 77804-158; and Mariano Ingoglia, Register Number 77033-158; and I find as follows:

None of the above named inmates were considered by the Board as en banc or original jurisdiction cases.

Each of the above named inmates was continued to expiration by the Board. In the case of each inmate the continuance to expiration placed the time to be served within or below the range set by the Board's paroling policy guidelines.

RECEIVED
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U.S. ATTORNEY'S OFFICE
DISTRICT OF CONNECTICUT

S-11

The notation on an inmate's file that he may not be transferred without prior approval of the Bureau of Prisons is not considered as an independent factor in parole decision making because this notation may have been placed on the file for a number of reasons, some of which are not relevant to parole selection. For example, this "special offender" marking may appear on the file of a prisoner who needs to be separated from a codefendant or some other prisoner for purposes of protection from threatened physical violence. The fact that a prisoner needs to be protected is not considered to relevant to whether he should be paroled. On the other hand, the "special offender" stamp may be placed on a file because the prisoner is associated with organized crime. In that situation, the basis for the "special offender" classification would be relevant to parole consideration. Therefore, it is the practice of the hearing examiners not to attach any independent significance to the "special offender" stamp, but rather to make their decision or recommendation on the basis of all of the underlying information in the file, including the presentence report, classification study, reports of the prosecutor and sentencing judge, etc.

Bernard R. Wrenn

BERNARD R. WRENN
Chief Hearing Examiner
United States Board of Parole

Washington,
District of Columbia.

Subscribed and sworn to before me this 26th day of April 1974.

Shirley O. Stutely
Notary Public

My Commission Expires August 14, 19

FILED
NOV 13 4 32 PM '74
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOSEPH AGONE	:	
-vs-	:	Civil No. B-74-229
JOHN J. NORTON, Warden, Danbury, Federal Correctional Institution	:	
ANTHONY CASTALDI	:	
-vs-	:	Civil No. B-74-287
JOHN J. NORTON, Warden, Danbury, Federal Correctional Institution	:	
JOSEPH D'ERCOLE	:	
-vs-	:	Civil No. B-74-294
JOHN J. NORTON, Warden, Danbury, Federal Correctional Institution	:	
MARTIN GOLDMAN	:	
-vs-	:	Civil No. B-74-384
JOHN J. NORTON, Warden, Danbury, Federal Correctional Institution, et al.	:	

APPLICATION FOR SUPPLEMENTAL RELIEF

I.

Petitioners Joseph Agone, Anthony Castaldi, Joseph D'Ercole, Martin Goldman are inmates at Danbury Federal Correctional Institution and in the custody of respondent John J. Norton, Warden of that Institution. Within the past three weeks, this Court has filed a Memorandum of Decision and entered a Judgment in each of the cases captioned above. (Copies of the Memoranda of Decision and Judgments are attached hereto.) In each case, the Court ordered:

"1. That the respondents forthwith remove and totally expunge the 'Special Offender' classifications from all records and files maintained by the Bureau of Prisons or by any of its institutions with respect to petitioner;
2. That the respondents are hereby enjoined from reclassifying petitioner as a 'Special Offender' unless he is accorded procedural due process as set forth in Catalano v. United States,[F.Supp. (D. Conn. 1974)]."

On numerous prior occasions, each petitioner has been denied furloughs, transfer to a community treatment center, or other prison services or benefits solely because of the "Special Offender" designation. Since the date on which the Court issued its Memoranda of Decision and filed the Judgments in these cases, the following events have transpired:

1. Each petitioner on or about October 25, 1974, filed with Danbury officials the appropriate administrative request, along with a copy of this Court's Memorandum of Decision and Judgment, seeking a furlough for some date in the immediate future.

a. Joseph Agone requested a furlough for on or about November 15-18, 1974 to go to his home at 178 Ohls Street, Patchogue, Long Island, New York.

b. Anthony Castaldi requested a furlough for as soon as possible to go to his home at 1304 Hollywood Avenue, Bronx, New York.

c. Joseph D'Ercole requested a furlough for on or about November 11-13, 1974 to go to his home at 289 Pleasant Avenue, New York, New York.

d. Martin Goldman requested a furlough for as soon as possible to check on his business and to be with his family at Oak Ridge Lane, Albertson, New York.

2. Petitioners Agone and Goldman also requested transfer to a community treatment center in New York City.

3. Petitioners Agone, Castaldi, and D'Ercole are supervised by Classification and Reclassification Team E, and Mr. Goldman is supervised by Classification and Reclassification Team C. In the ordinary course of processing furlough and community treatment center requests, petitioners' teams, comprised of the case manager, a counselor, and the head of Danbury's

education department, should have acted upon their requests on October 29, 1974. For some reason, however, all petitioners were omitted from the consideration of their Tears. See, e.g., the attached docket for Team E, dated October 29, 1974. The practical effect of their omission from consideration was a one-week delay in the processing of their applications for furlough and community treatment center. In this respect, it is important to note that other inmates who applied at the same time and after petitioners for consideration on October 29, 1974, were in fact considered on that date by their teams.

4. On November 4, 1974, each petitioner finally met with his Team concerning his administrative request, with the following results:

a. Petitioners Agone and D'Ercole were approved for a furlough by Team E. (See attached docket sheet for Team E, dated November 4, 1974.)

b. Petitioner Castaldi was approved for a furlough by Team E, after the physician at Danbury F.C.I., Dr. Rogol, told the Team that he saw no reason, in light of Mr. Castaldi's heart condition, why he should not be furloughed and that such a furlough was the best therapy for his heart condition. (See attached docket sheet for Team E, dated November 4, 1974.)

c. Petitioner Goldman was approved for a furlough by Team C.

5. Following these favorable actions, each petitioner either personally informed or the institution notified his family, telling them in each instance that the inmate would be receiving a furlough.

a. Petitioner Goldman's case manager, Mr. Sam Fine, notified Mr. Goldman's family.

b. Petitioner D'Ercole personally called his wife to tell her to pick him up on Thursday, November 14, for his first release from an institution since his incarceration almost eleven (11) years ago.

6. On information and belief, the Danbury F.C.I. Advisory Committee, comprised of the Associate Warden Max Weger, the Captain and two vocational employees, met on Friday, November 8, 1974 and vetoed the furloughs for petitioners Agone, Castaldi, and Goldman, none of whom received any written statement of reasons for this action.

a. Petitioner Goldman was informed by his case manager, Mr. Sam Fine, and the Associate Warden, Mr. Max Weger, that the reason for the reversal of the Team's favorable decision was his alleged degree of sophistication relating to a prior criminal conviction unrelated to the offense for which petitioner is currently incarcerated. Petitioner Goldman pointed out that this was an irrational justification in light of the fact that two and one half months ago, at a time he was designated "Special Offender," he was approved for a furlough by the very same Advisory Committee, which had full knowledge of his background. Petitioner further stated that nothing had changed in the intervening two and one-half months warranting disapproval of his furlough request.

b. Petitioner Agone was simply told by his case manager, Mr. Gordon Pittman, that "It looks like they don't want you out."

c. Petitioner Castaldi was informed by his counselor, Mr. Futner, that he was not receiving a furlough because he was a member of organized crime.

7. On information and belief, Petitioner D'Ercole was approved by the Advisory Committee for a furlough. Petitioner bases this belief upon informatic received on Sunday, November 10, 1974, from his counselor, Mr. Futner, who told petitioner to call his wife and tell her to pick him up on Thursday, November 14, 1974. Upon hearing this, petitioner's wife broke down and wept openly. Twenty minutes later, petitioner was summoned by Mr. Futner and told that there had been a "complication" and that his furlough must be approved by the Bureau of Prisons in Washington, D.C. This fact was confirmed on Monday, November 11, 1974 by the Associate Warden, Mr. Max Weger. Petitioner

D'Ercole protested to Mr. Weger that he saw no useful purpose in this additional step since the Bureau of Prisons had never responded to his last request for a furlough.

II.

Petitioners submit that no rational basis in fact or law supports the arbitrary and capricious actions taken by respondents. In support of this claim, petitioners allege that:

8. Petitioner Agone is 61 years old and has been incarcerated thirteen months on an eighteen-month (a)(2) sentence. His mandatory release date is December 13, 1974 -- one month from now. Because of his "Special Offender" designation, petitioner has previously been denied a furlough on four occasions, and transfer to a community treatment center on two occasions. In May 1974, for example, his Team approved a furlough request, but the Advisory Team, without stating any reason, disapproved the furlough.

9. Petitioner Castaldi has been incarcerated since February 13, 1974, and his mandatory release date is May 18, 1975. Mr. Castaldi is 61 years old and in poor health, having suffered a serious heart attack. His mother is 99 years old and in seriously failing health. His wife, who lives alone, is suffering from depression. His only prior furlough application was denied by his Team in July 1974, apparently because of the "Special Offender" designation.

10. Petitioner D'Ercole has been incarcerated almost eleven years. His mandatory release date is September 1975. Throughout his long period of incarceration, Mr. D'Ercole has not received a furlough. In May 1974, he was approved by his Team but denied by the Advisory Committee because of his "Special Offender" designation. In June 1974, Mr. D'Ercole was again approved by his team but deferred by the Advisory Committee pending a decision by the Bureau of Prisons in Washington, D.C. To date, petitioner has received no answer on this furlough request.

11. Petitioner Goldman has been incarcerated seven months and his mandatory release date is February 16, 1975. Requests for transfer to a community treatment center have been denied three times. His July 1974 furlough request was deferred. A furlough request the following month was approved by his team and the Advisory Committee. One and one-half months later, however, the Bureau of Prisons in Washington, D.C. denied his request for furlough and community treatment center without furnishing any reasons.

12. Each petitioner is a model, exemplary inmate. None of them has ever been charged with a disciplinary infraction. Petitioner Goldman, for example, holds an important position of trust and responsibility in the Danbury F.C.I. Records Office. The remaining three petitioners, Agone, Castaldi, and D'Ercole, are elderly gentlemen. Petitioner Castaldi is in poor health. Each petitioner has a family that desperately needs his comfort and attention. Since none of the petitioners have been allowed a furlough, each has an imperative need to be prepared for release to the community.

III.

Petitioners maintain that respondents and their agents and employees have openly defied and continue to defy this Court's Memorandum of Decision and Judgment in each of their cases and have violated their own regulations.

13. Respondents have failed to comply with this Court's order that they "forthwith remove and totally expunge the 'Special Offender' classifications from all records and files..." It is not sufficient for respondents to go through the transparent motions of physically removing the "Special Offender" stamp from petitioners' files and records. Catalano v. United States, supra, requires that respondents remove all vestiges of the classification process declared unlawful by this Court. This necessarily encompasses any discriminatory or differential treatment occasioned by the former "Special Offender" designation

As this Court recognized in Catalano, "[t]he consequences of a 'Special Offender classification are significant...[and] dire." Slip, at pp. 8, 10. Because petitioners have "a large stake in being eligible for these rehabilitative programs," respondents' evasive conduct and abusive treatment of petitioners constitute further "'grievous loss.'" Id., at 12, 13.

14. In open contempt of this Court's orders, respondents have launched a concerted effort, characterized by administrative delay tactics and duplicity to harrass petitioners and to subject them to a lawless regime of emotional and psychological abuse. Respondents have so far succeeded in accomplishing in the secret recesses of Danbury F.C.I. what this Court forbade them from doing openly -- they have deprived petitioners of "the basic elements of rudimentary due process." Id., at 14 (citation omitted).

15. Respondents conduct in denying petitioners' furloughs and transfer to community treatment center contravenes the Bureau of Prisons own regulations governing these inmate benefits. (See, e.g., attached copy of the Federal Correctional Institution Policy Statement, Inmate Furloughs.) As the Bureau of Prisons Policy Statement on Inmate Furloughs declares, "[f]urloughs can be an important part of the continuing effort which should be made to prepare offenders for release to the community . . . Furloughs represent a program through which the offender's alienation from family and community may be minimized. Additionally, performance on furlough provides a reality measure of release readiness." Page 1, 4. Each petitioner meets the "General Qualifications" for furloughs. See page 3. Moreoever, in light of this Court's decision in Catalano and the orders entered in these instant cases, petitioners are not subject to the disqualifying exception for "persons identified with large scale criminal activity..." See page 4. The patent irrationality of respondents' actions is dramatized by the unambiguous declaration in the Policy Statement that "[i]t is important that each offender with the demonstrated need and qualifications for furlough programming

have opportunity for participation and not be involuntarily deprived of opportunity for participating by reason of institutional assignment or other circumstances." See page 4.

16. Respondents are not invested with unfettered discretion in the administration of the furlough and community treatment center transfer program. As this Court has ruled in a highly related context, "the [Bureau's] broad discretionary powers do have perimeters and, in the unusual circumstance when evidence is presented that it acted arbitrarily or in violation of the regulations it promulgated, a court may intervene and review the actions of the [Bureau]." Masiello v. Norton, 364 F. Supp. 1133, 1136 (D. Conn. 1973). Petitioners submit that "[i]t seems obvious on the present record that there was no reasonable basis in fact" for the denial of furloughs and transfer to community treatment center and that they were denied such benefits "without just cause." Masiello v. Norton, supra, 364 F. Supp., at 1136, 1137.

IV.

Petitioners maintain that they have demonstrated a pattern of callous administrative indifference to a valid court order. Respondents have not sought a stay of this Court's orders in these cases or in Catalano. This Court's decisions are entitled to complete and faithful obedience by respondents. It is a mockery of our legal process for respondents to evade lawful process by resorting to subterfuges in the processing of inmate requests for benefits and services afforded to other inmates. Respondents' conduct also smacks of vindictive retaliation against petitioners for their successful prosecution of their claims in federal court.

In light of these disturbing developments, petitioners respectfully request that this Court grant their Application for Supplemental Relief and

(1) order their immediate release unless (a) respondents forthwith cease and desist from their unlawful conduct and immediately grant petitioners the furloughs and transfer to community treatment center for which they are qualified; and (b) respondents assure this Court that they will treat

petitioners in the same manner and respect as all other inmates who have not been designated as "Special Offenders";

(2) order that petitioners be released upon their own recognizance pending disposition of these matters;

(3) order that these matters be considered on an expedited basis and that the respondents be required to file a responsive pleading no later than November 18, 1974 and that these matters be set down for oral argument as soon as possible; and

(4) order such other relief as may be just and appropriate.

Respectfully submitted,

THE PETITIONERS

By: _____

Pierce O'Donnell
Dennis E. Curtis
Stephen Wizner
Michael J. Churgin
Attorneys for Petitioners
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Permission to Appear Pro Hac Vice and Application for Supplemental Relief was hand delivered to the office of the United States Attorney, 141 Church Street, New Haven, Connecticut, and mailed to Thomas Maxwell, Esq., Assistant United States Attorney, 915 Lafayette Boulevard, Bridgeport, Connecticut, this 13th day of November 1974.

_____

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOSEPH AGONE, ANTHONY CASTALDI, JOSEPH D'ERCOLE, and MARTIN GOLDMAN,	:	
Petitioners,	:	Civil Nos. B-74-229
	:	B-74-287
-vs-	:	B-74-294
	:	B-74-384
JOHN J. NORTON, Warden, Danbury Federal Correctional Institution, et al.,	:	
Respondents.	:	

AFFIDAVIT

ANTHONY CASTALDI, being first duly sworn, deposes and says:

1. I am one of the petitioners in the above entitled action.

2. I have been at the Federal Correctional Institution at Danbury, Connecticut since on or about February 13, 1974 following a conviction for income tax evasion and an 18-month Regular Adult sentence.

3. I am almost 62 years old and in extremely poor health. While incarcerated at Danbury F.C.I., I had a serious heart attack, for which I was placed in intensive care at Danbury Hospital. I take over 100 pills a week for my heart condition.

4. My mandatory release date, as presently computed, is March 18, 1975.

5. I presently have a minimum custody classification, am assigned to the Food Service, but spend almost all my time in bed convalescing. My work reports from my supervisor, Mr. Waldron, have been uniformly very good.

6. At no time during my incarceration have I ever been charged with or disciplined for violation of any institutional rules. Nor have I been prosecuted for any criminal offenses arising from conduct at the institution.

7. On or about June 17, 1974, I received an Institutional Review Hearing with the United States Board of Parole and was continued to expiration. During that hearing, the examiners mentioned alleged connections wth organized crime. I steadfastly denied these allegations, noting that I had been before a grand jury for 21 days and had denied similar allegations and that I had never been prosecuted for perjury. At no time was I ever shown any reports, documents or other information purporting to link me with organized crime.

8. Appeals to the Regional Director and the National Appellate Board resulted in an affirmance of the original order continuing me to expiration.

9. At the time of my June 1974 Institutional Review Hearing, I had a Salient Factor Score of 6 and a "high moderate" offense severity rating, and the Board of Parole's guidelines called for 16-20 months incarceration.

10. At some time after my incarceration, I was designated "Special Offender" without any notice or opportunity to challenge the evidence allegedly supporting the designation.

11. Despite my eligibility, on two occasions I have applied for and been denied a furlough, once before and once after this Court's decision in Catalano v. United States and order that respondent expunge the "Special Offender" designation from my files and records.

12. Despite my eligibility (because I now have less than 4 months before my release date), I have been denied CTC transfer since the Catalano decision and this Court's expungement order.

13. Each time that I applied for either a furlough or CTC, I expressed as a reason that my 99-year old mother was failing badly and might

die before I was released. Danbury officials had repeatedly denied me a brief special emergency furlough to see my mother, despite my offer to pay all expenses for the officers who accompanied me.

14. I first applied for a furlough on or about July 29, 1974. My Classification and Reclassification Team E headed by my case manager, Mr. Gordon Pittman, would not allow me to meet with them on the request and denied the furlough.

15. I thereafter discussed the furlough denial with Mr. Jerome Edwards, the Chief of Classification and Parole, who said that I was "affiliated with organized crime." When I vehemently denied this, he alluded to my record. I then pointed out this was an offense over 41 years ago.

16. I next discussed the furlough denial with Mr. Max Weger, who stated that "there would be no furloughs for 'special cases'." He further told me that it was a waste of my time to apply.

17. After Catalano v. United States and this Court's expungement order in my case, I applied for a furlough on October 25, 1974. When I applied, I showed my case manager, Mr. Pittman, a copy of this Court's expungement order, and he said, "It's about time. I'm glad this happened. Now we can treat everyone alike."

18. In the normal processing of this request, my team should have met with me and acted on the furlough request on October 29, 1974. However, I was mysteriously omitted from the Team E docket for that day, despite the fact that other inmates, who applied at the same time and after me for consideration on October 29, were considered on that date by my Team. As a result of this omission from the Team E docket, the processing of my application was delayed one week.

19. On November 4, 1974, I finally met with my team, comprised of my case manager (Mr. Pittman), my counselor (Mr. Pfutner) and someone from the Danbury F.C.I. education department (Mr. Spencer). During the discussion with my team, it was suggested that I secure the doctor's permission. Dr. Rogal approved, indicating that it was "about time," that this is the "best therapy" that I could ever have and this was "more than we can give you." The Team approved my furlough.

20. On November 8, 1974, the Advisory Committee reversed my team and took away my furlough. The Advisory Committee gave me no oral or written reasons for this action. I was neither allowed to be present nor permitted to submit information.

21. Shortly thereafter, I was told by my case manager, Mr. Pittman, who told me that I was denied because I was a "Sophisticated Criminal." I pointed out to him that they had not even bothered to change the initials. Before it was "S.C." for "Special Case" and now it is also "S.C.", but this time supposedly for "Sophisticated Criminal." During this period, Mr. Edwards, the Chief of Classification and Parole, had told my wife that my furlough was denied because I was a "Sophisticated Criminal". I also discussed this matter with the Associate Warden, Mr. Max Weger, who also gave me the "Sophisticated Criminal" justification. Mr. Weger promised to look into the matter, but I have not heard from him since then.

22. On or about November 14 or 15, 1974, I applied for a furlough and C.T.C. transfer. My request should have been heard by my team on November 18, 1974, but just like the previous time, I was omitted from the team docket. Although I am now scheduled for a team meeting on November 23, 1974 at 3:00, my case manager has flatly stated, "You're not going to get anything from us. Just serve out your time." I replied to him, "I'll always put in what I have a right for."

23. The denials of my furlough requests has had a unsettling influence on me and my family. Aside from being bitterly disappointed, my wife, who suffers from melancholy and depression, is failing badly. Personally, my life has been made miserable by this harrassment. I spend most of the day just lying on the bunk in my cell.

ANTHONY CASTALDI

Sworn and subscribed to before me this
day of November 1974.

Notary Public

Volume 4

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

FILED
Dec 3 1 53 PM '74
U. S. DISTRICT COURT
NEW HAVEN, CONN.

JOSEPH AGONE Petitioner -versus- JOHN J. NORTON, ET AL Respondents	Civil Action No. B-74-229
ANTHONY CASTALDI Petitioner -versus- JOHN J. NORTON, ET AL Respondents	Civil Action No. B-74-287
JOSEPH D'ERCOLE Petitioner -versus- JOHN J. NORTON, ET AL Respondents	Civil Action No. B-74-294
ROBERT FOUNTAIN and MARTIN GOLDMAN Petitioner -versus- JOHN J. NORTON, ET AL Respondents	Civil Action No. B-74-384

United States Courthouse
New Haven, Connecticut
November 25, 1974

B E F O R E :

HON. ROBERT C. ZAMPANO, U.S.D.J.

545

A P P E A R A N C E S :

FOR THE PETITIONERS:

DENNIS CURTIS, ESQUIRE
and
PIERCE H. O'DONNELL
(Pro hac vice)
127 Wall Street
New Haven, Connecticut

FOR THE RESPONDENTS:

PETER A. MEAR, A.U.S.D.A.
Church Street
New Haven, Connecticut

THE COURT: The series of cases known as Agone versus Norton, Castaldi versus Norton, D'Ercole versus Norton and Goldman versus Norton with Civil Numbers B-74-229, B-287, B-74-294 and B-74-384. The complaints seem to be along the same general lines, so we will consolidate the petitions. Hopefully we can hear all of them together. If one or more have facts that require separate treatment, I will, of course, so entertain the petition in that way.

I do have the affidavits and have the application, but have I received anything from the Government?

MR. MEAR: No, your Honor, the Government-- they have had submitted, in addition -- I got the case on Friday and I am not sure --

THE COURT: Well, does it boil down to this: that certain men who have been designated Special Cases have apparently had their labels removed, at least ostensibly, but feel that the Special Case designation lurks in the background because they have been denied benefits given other prisoners, benefits which they would -- they feel would be, shall we say, automatically given them?

MR. MEAR: I think that's correct,your Honor,

in each case. These are three denials of furlough and in each case they were denied primarily for -- there may have been other reasons, as well -- primarily, their background connection with large-scale organized criminal activity.

MR. O'DONNELL: By the way, Mr. D'ercole is no longer -- I have in effect withdrawn him, your Honor, he -- at the last moment, after we filed the application, he did get a furlough. Mr. Agone is not present. He is at West Street facility in New York on another matter. There's some -- we don't understand; he's either coming back to Danbury F.C.I. on Wednesday or he's being released. But I tend to think it's the former, but we're not certain about that.

Today we have Mr. Goldman and Mr. Castaldi with us and I have proposed written testimony of Mr. Agone.

THE COURT: I have the affidavits. Does the Government contest the general nature of the complaint?

MR. MEAR: No. The only problem we have is a very specific problem. I think it appears in Paragraph 17 in each of the affidavits, and that is with regard to normal processing of furough applications and "mysterious omissions."

THE COURT: I see.

MAX WEGER, having been first duly sworn, testified as follows:

BY THE CLERK:

Q Will you state your address for the record, please?

A 201 East Pembroke Road, Danbury, Connecticut.

DIRECT EXAMINATION

BY MR. MEAR:

Q Mr. Weger, would you state your occupation, please?

A At the present time I am the Associate Warden at the Federal Correctional Institution, Danbury, Connecticut. Part of the Federal Bureau of Prisons.

Q Generally could you state what the Associate Warden does and specifically could you state what the Associate Warden has to do with furloughs?

A Yes, sir. The Associate Warden at Danbury, as many other institutions, is, of course, directly responsible to the warden in all administrative matters of the institution, administrative matters connected to general operations, budgeting, carrying out of other programs, as well as treatment programs, which is also inclusive of the furlough program.

As the Associate Warden of Danbury I also chair the Advisory Committee which meets in a supervisory capacity and takes into consideration certain items passed on or before by various classification committees within the institution. I chair that

particular committee along with having -- three or four other members connected with it, also primarily supervisory.

Q Do you also, with regard specifically to Petitioners Agone, Castaldi and Goldman, do you have occasion to or do you review their files frequently? Do you look at the file? Are you familiar with their files?

A I'll look at, you know, almost any individual's file upon request either of a staff member or of the men themselves.

Q You look in the file in passing on a furlough many times?

A That's correct, sir.

Q All right. Are you familiar with the Court's decision -- this Court's decision -- on the Catalano case handed down on the 9th of this year?

A Yes, sir.

Q And with regard to the Catalano case, what -- what steps have you -- or do you know any other steps that have been taken at the prison?

A In accordance with the decision in the Catalano case, the Record Department, Classification, Parole Department as well as any other department involved were ordered to expunge the records of any reference made to Special Offender and again not to place that category or designation upon the files until a hearing had been given.

Accordingly, we have expunged the records of the category

"Special Offender."

Q How precisely have you expunged the records?

A Well, the policy statement, which requires notification of the file, indicates on the P.B.581, which is the face sheet of the file, that the stamped notation made there: "Special Offender. This inmate is not to be transferred," etc. etc., "without prior Bureau approval," that has been removed, as has any material which was forwarded to our central office in Washington, D.C. in accordance with the policy statement in order to gain permission to designate the offender as such.

Q So there is no longer any vestiges of the Special Offender program in any of these, is that correct?

A That's correct, sir.

Q All right. With regard to furlough application, could you give us some background procedures of how furloughs are handled at Danbury?

A Well, from a historical standpoint, of course, the Bureau of Prisons has been granting furloughs to many of the youth-type offenders in youth-type institutions for quite sometime, and within the past year the Bureau, of course, through Congress was able to acquire and receive favorable legislation which allowed us to further broaden the furlough policy in adult institutions also. And prior to that, of course, the majority of the furloughs were only scheduled for emergency family crises sometimes just

-- you know, partaking in organized criminal activities, the fact that the rehabilitative programs, you know, and community based program activities being afforded, would have a detrimental affect upon the community at large.

BY THE COURT:

Q If at least Mr. Goldman was turned down because of his organized crime connections, somebody must have reached that conclusion, so would you define "organized crime connections" or "member of organized crime" for me? What does that mean?

A Again, your Honor, it's something I'm sure that various people in the criminal justice system, you know, would have various answers to, but I believe we can talk in terms --

Q Tell me why Mr. Goldman was turned down for being connected with organized crime, as you used the term with respect to Mr. Goldman, what is the definition? I am sure there are many definitions by other prison officials with respect to other petitioners, but I'm only concerned with Mr. Goldman at this point. What is the definition of "a member of organized crime" as related to Mr. Goldman?

A Mr. Goldman's activities and association with those people involved in organized criminal activities is the best I can come up with offhand here.

Q Let me ask you this -- I don't mean to get into a long debate with you over it, I have heard this time and time again in

several cases -- can you think of any two co-defendants in your prison who participated in a criminal act together in which that act could not be classified as "organized criminal activity?"

A As a basic interpretation I could say that would stand, but at the same time, individuals who are co-defendants in particular instances all -- I should say, all co-defendants involved in instances are not classified as, you know, "organized criminals."

Q Exactly. I'm trying to find out how you classify some "organized criminals," others not. That's what I'm trying to find out. If three men get together in a room and plan a bank robbery, and they plan it for days and weeks, the chances are, from what I can see from all these records I have been looking at, those three bank robbers would not be classified as members of organized crime, but if a man evades income tax without the help of an accountant, without the help of a lawyer, without the help of anyone, he comes into prison with no co-defendants and can find himself labeled a member of organized crime.

My question to you is, somebody has to have a definition before you could put a label on a man, and what is the definition? You have said to me, "If they're involved in criminal activity." Well, I would venture to say 90 percent of the men in your prison are involved in organized criminal activity.

A I can go a step further, your Honor.

Q Yes?

A I think I would like to take, you know, a look at the word "organization" itself rather than "organized criminal activity," and I believe that our interpretation and our, perhaps, definition is linked more to the recognizance of established criminal organizations --

Q All right.

A -- in this country.

Q All right. Now, I am with you on that. If a man is a member of an organization which the Government wants to put a label on, whatever it is, Mafia, Cosa Nostra, X, Y, Z, all right. Now, on what do you base that, that Mr. Goldman is in that organization? That is my next question.

A We base Mr. Goldman's classification -- or prior classification upon the fact that he has been in frequent association with members of this particular organization.

Q Who told you that?

A Official records.

Q Has he had a chance to see these records?

A No, sir.

Q Does he have a chance to say, "That I have an uncle that looks exactly like Mr. Gallo, and every time I'm with my uncle somebody comes up and accuses me of being with a reputed Mafia figure." Doesn't a man have a chance to dispute the fact that an agent could be incorrect or wrong? Apparently that's not

so.

A No, it is not so at the present time. We have expunged the record, but we have not established hearings, you know, to date.

THE COURT: I have accomplished nothing, Mr. Mear, with my Catalano case if they strike the words "Special Case" off a man's record and then turn him down for being a "Special Case" or a "Sophisticated Criminal" or a "member of organized crime" what have I accomplished?

MR. MEAR: The Government is here in a very difficult position, we understand. I don't intend to claim that this is really outside of, certainly, the spirit of Catalano, although it is not something specifically ordered by Catalano, the thing that has been afforded by the procedures which are now being used, if anything, we're not really talking about a procedure, we're talking about specific denials of people because of their believed criminal activity. As far as the benefits of having the "case" removed, we have certainly avoided the delays of consideration, we have avoided the consideration in Washington, of the furlough problem, we have avoided the parole -- the problem with the Parole Board which once again has to look at the file on its own and not simply see a

tab.

THE COURT: But the bottom line result is exactly the same for the same reason.

MR. MEAR: They look at the pre-sentence report certainly, as does the Bureau of Prisons. The problem, your Honor, is that we have now reached the point where we have to talk about what hearing -- for a furlough, for C.T.C.? We're not working now with the Special Offender Program, but simply with specific rehabilitative programs which are available out there. We press our discretionary right in this area as something which your Honor has heard before, I know.

THE COURT: Yes. I don't dispute your discretionary -- the discretionary aspects of furlough, C.T.C., parole, all I'm saying is that if a man is denied a furlough or C.T.C. or parole because on his file it says "Special Case," what have I accomplished by saying take the words "Special Case" off his file, but beyond that, you can deny him for the very same reasons. The whole purpose of Catalano was to give a man an opportunity to come in and say, "Look, if you want to classify me as a member of organized crime, let me know so I can defend myself." And we do know, we have had cases right here in this very courtroom.

where the prison officials admitted that the man should not have been so classified. And that's without giving him a hearing, that was only after they reviewed the file without an adversary proceeding of any sort. Before they came into this courtroom they said they looked at the file again and admitted they made a mistake. So you can imagine if a man had an opportunity to be heard, that in some cases he probably would have a defense.

I heard in this very courtroom he associated with Mr. X, and somebody got up and said Mr. X has been dead for years and years.

MR. MEAR: What we have, your Honor, -- and your Honor apparently doesn't think it's enough -- that we do have a case by case consideration of the man, complete consideration of his file, of his program at Danbury, a whole consideration. We don't have somebody looking at a file and saying this guy's -- we don't have a reputation, perhaps, of an error in the beginning, granted that we're looking at the file again, but each time somebody looks at the file and isn't reading off a label and there is an opportunity for some input into it, in spite of the fact that he was once classified "Special Offender".

THE COURT: My mind is still wide open, I have not made it up, I wondered. When I interjected we are again the phrase "organized crime," "organized criminal." And I'm not only basing my reactions on the law, what the Government can certainly appeal, they did not appeal Massiello and they can certainly appeal Catalano, if they want, but I have a background in law enforcement, and my definitions then certainly differ with what I hear in this courtroom, and I was part of the Department of Justice also and as vigorous a law enforcement agent in Connecticut as anyone just now, it's just that I grew up with definitions certainly at variance with what I continually hear in this courtroom.

MR. MEAR: Your Honor, if I may. One thing the -- considered with the definition is something that's being worked on right now. The Organized Crime Section in Washington and the Bureau of Prisons are trying to work out a definition and they are trying to work out procedures that will comply with Catalano. I'm not sure how that will eventually work out, they're having all kinds of problems meeting on that. But in each one of these cases I'm not sure that we're really talking about any -- any longer, we're not talking about

a catchword or a definition, I think that the Bureau of Prisons examines the man and determines that because of the notoriety of letting this particular man out the credibility of the Bureau of Prisons is greater lessened, because they have a fear that when the man is out because of his file, not because somebody said he was "organized crime," that there are dangers involved in letting him out.

THE COURT: I led you into this, Mr. Mear, but perhaps we should save this for oral argument, as well as for the Court. You may have a lot more questions for the Warden and, of course, the other side has a right to examine. Then, maybe we can get into it. My mind is still open. Although I suppose you have a right to see that perhaps I'm a little amazed--not dismayed, but amazed -- that I am hearing the same phraseology.

MR. MEAR: The Government can't seriously deny, your Honor, that we're in effect asking for a cutback of Catalano. There's no doubt that this is in the spirit of Catalano and we are to some extent asking that some of the decision in Catalano be re-considered.

THE COURT: You don't have to look to legal

principles, maybe you just have to look to a little bit of common sense, that here -- take Mr. Goldman, his team manager says okay, the team says okay, the Advisory Committee says okay so, then, I assume that the Warden said okay, it goes to Washington and Washington says no, because he's a member of organized crime. So, because of Catalano, for that reason the case no longer goes to Washington but on the second time around the team says okay, the Advisory Committee says no, and the very reasons that are given are the same reasons that existed when they approved the man a few months ago. The only difference, from what I can hear, is that Washington intervened between the first and second time. But as far as the Advisory Committee goes, if he had a record today, he had a record when they approved the furlough. If he was involved in extortion today, he was involved in extortion when they approved the furlough. The only difference I see that Washington has now -- let the prison officials know that they really don't like the idea that this man is walking out on furlough and, in a way, I have set that issue aside as a valid one through Catalano. I certainly don't like to rule and find that it's an empty, hollow gesture, that they won

a battle, but lose the war.

What I think I should hear is cross-examination and then oral arguments. I really assure you my mind is still not made up, the only -- in fact, the only petition that really catches my eye is Goldman because he was approved by everybody at the prison and now he is back in, saying, "I'm disapproved, despite the fact that I even have an added arrow to my bow, and that's Catalano."

But we have been in Court since early morning, so I am going to have to resume again this afternoon at, say, 5 after 2.

(Whereupon, a luncheon recess was taken.)

THE COURT: That's what I thought. On the other hand, the witness then indicated something to the effect that the Warden or the Chief Executive Officer in the Warden's absence can grant furloughs and I take it he's the Chief Executive Officer in the Warden's absence. Even if the Warden is present, does he delegate some of the work to you?

THE WITNESS: Not on furloughs, no, sir.

THE COURT: He handles it himself?

THE WITNESS: It's a matter of our Advisory Board making a recommendation at -- you know, approving and recommending on to the Warden and the Warden in the majority of cases goes along with Advisory. If he has questions, he raises it.

BY MR. O'DONNELL:

Q It's true that -- the vast majority, they're approved, aren't they, Mr. Weger?

A True.

Q Well, let me try again. Assume the Court did order you to disregard the Special Offender Classification and whatever allegation or charges there were on the record about connection with organized or sophisticated criminal activity, would you as a member and chairperson of the Advisory Committee vote for furlough?

A Okay. Now, if I can answer it --

Q Please do.

A -- in my way. As a member, Chairman of the Advisory Committee, if we were so ordered by the Court to disregard the connections to or any allegations made in connection with or to organized crime, it would so be done, and we would then look upon the request and, you know, everything combined, and make a decision as to whether they should go out, yes or no, you know, in terms of the need, you know, for the furlough: what's the purpose of it, what would be accomplished by it and things of this nature.

Q Okay. Fine. Now, following up on that, Mr. Meger, I believe your testimony was that you would actually go through this process, on numerous occasions you looked at need, whether they'd been proper institutional conduct, institutional adjustment and the like, you set out four criteria when you were on direct examination, and I also understood your testimony to be that in each instance the reasons why they didn't receive the furlough was this special offender, organized crime activity. So, in light of that testimony, what would your answer be?

A Let me answer it, if I can, with a question, and I will try to -- I'm not trying to avoid the issue, but, for example, if Mr. Goldman put in a request to go out to take care of his business activities, as he has put in requests previously for, you know, to go out, dual purposes, in all probability that would

be not granted. If his request were other things connected to, you know, the family situation or pre-replanning, things of this nature, yes, it probably --

THE COURT: What were his reasons when you granted it, do you recall?

THE WITNESS: No, sir, I don't. I do know in most recent --

THE COURT: How do you know that if he put down "business reasons" he wouldn't be granted?

THE WITNESS: Because our furlough policy is not established, your Honor, for, you know, carrying on of business activities.

Q Is it not a fact that he did put the dual purpose, family and business?

A I don't know. I know he did most recently.

Q I believe his affidavit states on every occasion he put that reason down.

A I don't know. I can't say.

Q Okay. So your testimony is that, at least as to visitation with family, a furlough asking that, seeing that as the need, which he has stated on all prior occasions, your answer would be that you would not vote in favor of his furlough?

A You're locking me in to some degree.

Q I'm not trying to badger you, Mr. Weger.

A. You're locking me in. I would say, in all probability--I would say his case would receive the full and same impartial consideration as other cases.

Q. I assume that -- my question to you is, if the Court so ordered, you would disregard -- in light of the fact that he stated that he wanted a furlough for family reasons, would you vote in favor of it?

A. I guarantee I would give full impartial consideration on it.

Q. You agree you are not answering my question.

THE COURT: He is answering your question.

MR. O'DONNELL: It may be an awful question.

THE COURT: It may not be as specific as you want. I think we ought to get on to something else, I don't think you are going to get much more out of him.

MR. O'DONNELL: All right. Thank you, your Honor.

Q. What are the criteria on the policy statement, Mr. Weger, for transfer to a community treatment center?

A. Again, it's based on need primarily.

Q. Anything else?

A. I would want to fully review the policy statement on community treatment centers. I previously was a director of one for three and a half years and I do recall specific things, but I

Catalano.

THE COURT: Let me ask you, and get right to the point, have you received direct or indirect, explicit or implicit instructions from anyone in the Bureau of Prisons or any other source that special case designations shall be removed but special case results shall not change?

THE WITNESS: We have not. I have not. And that's as direct to the point as I can be in response to your question.

THE COURT: Well, didn't anyone on your Advisory Committee say that, "We are doing exactly what Judge Zampano doesn't want us to do?"

THE WITNESS: No, we did not say that.

THE COURT: And that is, "Take into account a special case designation when we are considering furloughs, unless, unless the man has had a hearing?" Why didn't someone say that? Do you know why? Why didn't you say it? You read my opinion.

THE WITNESS: I read your opinion, your Honor, and also I felt that, you know, we were complying with it. If I can give you a history of what happened after we received your opinion, or your order or decision. In fact, we looked at it, we obviously contacted our

Central Office to discuss it, and at that time we were advised that we should go ahead and expunge the records, that we should not at that time, you know, go ahead with the hearing because they wanted to look at this further and, you know, make their proposals, or what have you, and we were instructed to go ahead and handle all requests on a case-by-case basis, taking all information into account and this is what we have done, this is what we have endeavored to do. We have spent a lot of time on each of these cases, your Honor, and I don't believe we can say that this part of the record, your Honor, we will disregard while taking into account this part of the record. We no longer designate as special offenders.

THE COURT: Well, let me ask you this. Is someone trying to be humorous from the Bureau of Prisons when they disregard "Special Case" and now are using "Sophisticated Criminal?"

THE WITNESS: No, sir. And in fact, the special case -- well, I'm not trying to make a play on words.

THE COURT: But somebody is making a play on initials.

THE WITNESS: If you take a look at our policy

statement relative -- it doesn't even say "Special Case," it says, "Special Offender." The first time I ever heard "Special Case" was when I came to Danbury, Connecticut. And the fact that we talked about -- no one's coined the term necessarily, the fact it's come out here many times, sophistication, sophisticated crime, no, no one's trying to be humorous.

THE COURT: Do you use that term, "Sophisticated criminal?"

THE WITNESS: I use the term "Sophisticated criminal activity." Yes.

THE COURT: Did you use it with Mr. Goldman when he asked you why he was turned down? He alleges that you told him that he was a sophisticated criminal and that this characterization was based on a prior offense and not the one for which he was presently incarcerated, is that substantially --

THE WITNESS: I think it's more likely that I turned him down upon his prior sophisticated criminal activity. But it is a term I have used.

THE COURT: You feel more comfortable with that term than "organized criminal activity?"

THE WITNESS: Not necessarily. Because I don't

believe that we can separate -- I still feel we have to recognize that there is organized criminal activity and, you know, by a blink of the eye or something like that, I can't disregard that.

THE COURT: Would you define "Sophisticated Criminal Activity" for me?

THE WITNESS: Your Honor, I am not very good at definitions but I would again have to make some sort of a statement relative to behavior which is of a planned nature that is connected to,again, an organization of people who are intent upon gaining their likelihood through illicit and illegal means, something to that effect.

THE COURT: Now, obviously my next question is with respect to these men here. Which organization do they belong to?

THE WITNESS: As I indicated previously, our records would indicate that Mr. Agone is connected to the Vito Genovese organized crime family; Mr. Catalano -- Castaldi is and has been connected to the Thomas Lucnese organized crime family and Mr. Goldman, to the best of my recollection, his connections with Mr. Dellacroce and Mr. Catalano would suggest and it may well again be the Gambino Family.

THE COURT: And it is crystal clear, is it not, that no one of these men have had an opportunity to contest that characterization?

THE WITNESS: That's correct.

THE COURT: In any way? Is that so?

THE WITNESS: At this time that's correct.

THE COURT: And I take it that you have -- because your testimony here is not based on what somebody else told you, I assume you have looked at these records yourself.

THE WITNESS: I have looked at the available records that we have, that's correct, sir.

THE COURT: What is the source for each one of those characterizations with respect to each one of these men?

THE WITNESS: The United States Probation Office pre-sentence report would be the bulk of it. In fact, I would probably say it would be the vast majority of it.

THE COURT: Are those pre-sentence reports available, Mr. Mear?

MR. MEAR: They are available, your Honor, yes.

THE COURT: I would like to see them at a

our evidence about his new car every year, about his charge accounts, his gambling records, his standard of living, based on the pre-sentence report. If people want to take the stand and say that isn't so, I really don't know where that's going to take us.

THE COURT: And I am not sure what level we are on here. But right now I am not interested in second-guessing the Advisory Committee as to the persons who should get furloughs or be sent to C.T.C., that's within their jurisdiction and their discretion, so long as they do not abuse it, and I am mostly concerned, however, about whether or not at least the accusations that have been made by the Petitioners in their Briefs, to which the Government has not had an opportunity to respond, that there have been blatant and premeditated and concerted efforts to avoid the impact of Catalano by striking the "special offender" designation from the face of the file, but then going right ahead and denying the benefits to these men because they are known as special offenders within the institution and to the prison authorities. That is the main thing on my mind at the present time.

The third problem we have here is that at least two of these men are about ready to go out, are

MR. O'DONNELL: In lieu of the witnesses, your Honor, we asked that the two affidavits and the proposed written testimony of Mr. Agone be accepted and we have no further witnesses.

THE COURT: Well, it's up to counsel. How do you want to proceed?

MR. O'DONNELL: I have some argument. Would you like to hear that first or the Government, your Honor?

THE COURT: Well, you are the movant, so --

MR. O'DONNELL: Mr. Mear candidly stated to the Court during his colloquy that it could be construed that they're asking for Catalano to be cut back. I would suggest to the Court that they're asking to withdraw your opinion, to eviscerate it. there'd be nothing left. It would be at best an advisory opinion. The heart of Catalano, it's whole reason for being was these secret classifications processes whereas the Court said there is grievous loss when someone doesn't get these rehabilitative programs. The whole purpose of Catalano was to bring this out in the open, to let the sunshine in and to at least let the inmate, as you said, have minimum due process guaranties.

I think we have established that simply has not happened. In fact, I think we have established that they have perhaps physically gone through the process of removing a cover sheet or a list from the inmate's file, but the brutal reality is the bottom line, that these men are still special offenders in the eyes of the Bureau of Prisons and, certainly, in the eyes of the people whose lives are in their hands day-to-day. I think you can deduce nothing from Mr. Weger's testimony other than --

THE COURT: Now, Mr. Weger said, "When we open a man's file and we look down and read different things, how can you expect us to take that and disregegate it out when it's part of his file. It may not justify a "special offender," classification, we don't use it but we talk about what's in the file. When the file says that he owns 24 homes in three different countries, and it's a new car every year, and travels around with the ilk of Vito Genovese, etc., it's there in front of us and we read it. Now, what do we do about that?

MR. O'DONNELL: Well, I think there's -- I have a couple of responses. Obviously, it's asking almost a human thing to ask someone to disregard

something they see before their very eyes, it would be the Emperor's New Clothes. We're not asking the Bureau of Prisons to do that. I think the plain reading of Catalano is before you terminally rely on this -- we're dealing with timing here -- before you can rely on information that has not been subjected to the limited adversary, contrary process, by practicing procedures that were to go on in Catalano, before you can do that you have to have the minimum due process protections that you called for, simply didn't happen in this case. I would argue that had that happened, had there been a full and fair compliance with this Court's order in Catalano, then we would -- it's a different ballgame.

THE COURT: But the Court only ordered that the "special offender" designation be removed from the file. So they have come forward and said, "We have removed it from the file."

MR. O'DONNELL: Well, I'm certainly not going to argue with the Court what Catalano says. I mean, that was the order that issued.

THE COURT: I am in effect paraphrasing what the Government is saying.

MR. O'DONNELL: Yes. That's not the raison

d'etre. It's not the reason for Catalano. It talks at length about the various programs and benefits and proposals that are available, that are important to inmates. The Court also talks about what happens when somebody is a special offender, how they go about deciding you are a special offender. The Court went to great pains to talk about the standards that should be applied, the Nasiello vs Norton standard, on page 8 of the Court's --

THE COURT: I know what is in Catalano, but what is the --

MR. O'DONNELL: "Special Offender" was something much more, your Honor, than a stamp. There was a great deal more than a classification or designation. For petitioners like this, it's a way of life at the federal correctional institution in Danbury. It hangs over them every day of their life there, and simply because they no longer wear a "Special Offender" designation on their file, believe me, your Honor, the testimony seems to clearly indicate they carry it with them wherever they go.

The disability the Court attached to the classification itself continues unabated today. That is the only reason we allege why these men have not

received the benefits and privileges.

THE COURT: Well, now, with respect to Agone, my very limited notes state the reason he was turned down -- actually, the word "need" was used. He violated parole on a prior occasion. It does say "member of organized crime." But, also, the Strike Force lawyer wanted him to be brought back to testify before a grand jury, and there were indications he might refuse and be subject to prosecution. If that is so, I assume they don't want him on the street so he could avoid process and maybe abscond to avoid another sentence, etc., etc. So they make out a fairly good case for Agone. But is it my province to review furlough requests to determine whether a furlough should be granted or not. We certainly don't want to get in that business.

MR. O'DONNELL: I'm not asking you to do it, your Honor. We're asking two things which we think Catalano implicitedly asks. One, that the procedures that are asked to dispense an inmate benefit or privilege be lawful and constitutional. Secondly, we're asking that the agency abide by its regulations and that it have a reasonable basis in fact for its decisions.

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOSEPH AGONE, ANTHONY CASTALDI, JOSEPH D'ERCOLE, and MARTIN GOLDMAN,

Petitioners,

-vs-

JOHN J. NORTON, Warden, Danbury Federal Correctional Institution, et al.,

Respondents.

Civil Nos. B-74-229
B-74-287
B-74-294
B-74-384

PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR SUPPLEMENTAL RELIEF AND APPLICATION FOR RELEASE UPON PERSONAL RECOGNIZANCE AND/OR BAIL PENDING FINAL DISPOSITION

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5-58

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOSEPH AGONE, ANTHONY CASTALDI, JOSEPH D'ERCOLE, and MARTIN GOLDMAN,	:	
Petitioners,	:	Civil Nos. B-74-229 B-74-287 B-74-294 B-74-384
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PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR SUPPLEMENTAL RELIEF AND APPLICATION FOR RELEASE UPON PERSONAL RECOGNIZANCE AND/OR BAIL PENDING FINAL DISPOSITION

Statement of the Case

In October 1974 this Court filed a Memorandum of Decision and entered a Judgment in each of the above-captioned habeas corpus cases involving four inmates at the Danbury Federal Correctional Institution. The Court ordered that respondents "remove and totally expunge" the "Special Offender" classification from all records pertaining to these petitioners maintained by the Bureau of Prisons and Institutions; the Court further enjoined respondents "from reclassifying petitioner[s] as "Special Offender" unless [they are] accorded procedural due process as set forth in Catalano v. United States, [F. Supp. (D.Conn. 1974)]."

On the heels of these orders, each petitioner applied for a furlough. Each request was unanimously approved by his Classification and Reclassification Team (hereinafter referred to as Team), but was subsequently denied by the Institution's Advisory Committee. Petitioner GOLDMAN'S request for transfer to a New York City Community Treatment Center (CTC), a halfway house, was disapproved by his Team.

Following the Institution's denial of these requests, Petitioners filed with this Court an Application for Supplemental Relief, alleging that Respondents had violated this Court's orders and Catalano v. United States and that Respondents' actions lacked a rational basis in fact because they were contrary to their own regulations governing these rehabilitative programs. Petitioners asked this Court to order their release unless respondents ceased and desisted from their unlawful conduct and immediately granted petitioners' requests and unless they assured this Court that they will treat petitioners in the same manner and respect as all other inmates who have not been designated as "Special Offenders." Petitioners further requested that they be released upon their own recognizance pending disposition of their application.

An evidentiary hearing was held on November 25, 1974, at which the Court received affidavits from Petitioners CASTALDI and GOLDMAN and the proposed written testimony of Petitioner AGONE. The Court also heard testimony from a government witness, Mr. Max Weger, the Associate Warden of the Danbury Federal Correctional Institution and the Chairperson of the Institution's Advisory Committee. Argument was heard on Petitioners' application for immediate release pendente lite, which the Court denied at the time. It was understood, however, that a structured interim release proposal would be entertained.

At the conclusion of the evidentiary hearing, the Court set a briefing schedule, with the Government's submission due on or before December 6, 1974, and Petitioners' memorandum due ten days thereafter. Counsel for the Government subsequently asked for and received Petitioners' counsel's stipulation to a time extension to December 9, 1974 for the Government's response.

The day after the evidentiary hearing, November 26, 1974, Petitioners filed an Application for Release Upon Personal Recognizance and/or Bail Pending Final Disposition of Petitioners' Application for Supplemental Relief. Various forms of interim release were proposed, ranging from release upon personal recognizance or bail bond under parole-type supervisory conditions to release for a limited period of time such as seven days under conditions prescribed by the Court.

After the filing of the Application for Supplemental Relief, Petitioner D'ERCOLE was granted a furlough. On December 13, 1974, Petitioner AGONE was mandatorily released from federal custody after having served the maximum amount of time under his sentence. Accordingly, Petitioners CASTALDI and GOLDMAN are the only remaining petitioners in a position to take advantage of any furlough or CTC programs that might result from this litigation.

The Facts

The facts essential to a resolution of this matter are not in dispute. In lieu of their testimony at the evidentiary hearing, Petitioners CASTALDI and GOLDMAN submitted Affidavits which were introduced by stipulation of both counsel.[1/] The Affidavits set forth in detail the circumstances surrounding their application for furloughs and CTC and are corroborated by the testimony of the Associate Warden, Mr. Weger.

Petitioner GOLDMAN

Petitioner GOLDMAN, a prototypical exemplary inmate, has applied for furlough and CTC on three occasions, twice before and once after Catalano v. United States and this Court's order that respondent Norton expunge the "Special Offender" designation from Petitioner GOLDMAN'S files. Each time he stated as reasons that he needed CTC to work at and try to save his failing business[2/] and a furlough to be with his family, including three teenage children and his bedridden mother. One pre-Catalano furlough request in August 1974 was approved by his Team and by the Danbury F.C.I. Advisory Committee, at a time when Mr. Weger was Chairperson of the Committee. Because of the policy then in effect, the furlough request had to be approved at a higher administrative

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[1/] Counsel for the Government, Mr. Mear, objected to Petitioner GOLDMAN'S and CASTALDI'S characterization in Paragraphs 17 and 18 of their respective Affidavits that their applications for furloughs and CTC had been "mysteriously omitted" from their Team dockets and thereby not processed in the normal manner. Transcript at 4-5 [hereinafter referred to as Tr.]. The Government's witness testified that "ordinarily [such applications] will be taken up as a routine matter within a week's period of time...perhaps even less" and that there had been "no policy of delay" for these Petitioners' applications. Tr., at 12-13. One possible reason for delay, Mr. Weger suggested, was the complexity of these cases in light of the recent expungement order. Id., at 13. Mr. Weger did not testify, however, that the applications had not been delayed.

[2/] Since the evidentiary hearing, Petitioner GOLDMAN'S business partner has resigned from the firm, thereby casting in grave doubt the future of his sole means of support for his family upon his release. In fact, because he has not been allowed to leave the institution even for the briefest period of time, he is totally in the dark about what is happening to his firm, including the fate of his thirty employees.

level in the Bureau of Prisons Central Office in Washington, D.C. The Central Office denied the furlough without furnishing Petitioner GOLDMAN any reasons. GOLDMAN Affidavit, at 2-3. Mr. Jerome Edwards, the Chief of Classification and Parole at Danbury F.C.I., told Mr. GOLDMAN that he had been denied CTC because he was a "Special Case" and because of his age (52).[3/] Mr. Edwards further told Mr. GOLDMAN that he had been given no reason why Mr. GOLDMAN had been designated "Special Case." Id., at 3.

Upon receipt of the expungement order, Mr. GOLDMAN applied for a third time for furlough to be with his family and CTC; his application was accompanied by a copy of the expungement order. After an unexplained week's delay in the processing of his application, he met with his Team and once again secured their approval for the furlough. The Team would not discuss CTC. Ibid. On November 8, 1974, the Advisory Committee overturned the Team's decision without permitting Mr. GOLDMAN to be present or to submit information and without furnishing him with any written reasons for the unfavorable decision. Mr. GOLDMAN was told by his case manager, Mr. Sam Fine, and by the Associate Warden, Mr. Weger, that he was a "Sophisticated Criminal," a characterization, Mr. Weger told him, that was based upon his prior and not the instant tax offense. Mr. GOLDMAN'S statement to Mr. Weger -- that the very same Advisory Committee had approved him for a furlough before Catalano and that nothing about him had changed since then -- prompted Mr. Weger to resubmit the furlough request to the Advisory Committee. The earlier unfavorable decision

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3/ Mr. Weger testified that as to CTC eligibility, there is no "presumption or complete hard and fast rule against someone based on [his] age...." Tr., at 49. Under questioning by Petitioners' counsel, Mr. Weger testified that so-called "white collar" offenders are not barred from going to CTC and that some had in fact gone from Danbury in the past. Id., at 51.

was not changed and the stated reason was simply "Sophisticated Criminal." Ibid. M Weger testified that Mr. GOLDMAN was approved for a furlough by the Advisory Commit before Catalano but that one reason it had been denied by the Bureau's Central Office was "criminal sophistication." Tr., at 21. He acknowledged that the Advisory Committee had denied a post-Catalano furlough, following a favorable Team decision, "in light of our Central Office's prior decision not to place him on furlough status. . . . " Tr., 21-22.

The repeated denial of furloughs and CTC has had a demoralizing effect on Mr. GOLDMAN and his family. His wife has become a bitterly disappointed person, a progressive development which has been accelerated by the fact that on two occasions Mr. GOLDMAN'S case manager personally notified Mrs. Goldman that her husband would be coming home for a furlough, only to be later told that he would not be given a furlough. Id., at 4. As for Petitioner GOLDMAN, this "cruel treatment" by respondent has been degrading and has left him "bewildered, unsure of myself and the world I live in." Ibid.

Petitioner CASTALDI

Petitioner CASTALDI is in extremely bad health, having suffered a serious heart attack during his confinement at Danbury which required his transfer to the intensive care unit of a local hospital. He has been a model inmate and when he worked before his heart attack, his work reports were uniformly good. He now spends most of his time in bed convalescing. CASTALDI Affidavit, at 1. Mr. CASTALDI has twice applied for and been denied for furloughs, once before and once after this Court's decision in Catalano .v. United States and expungement order. Each application was supported by

the stated reason that Mr. CASTALDI wished to see his 99-year old mother who is failing badly and might die at any moment.[4/] Contrary to normal practice, Mr. CASTALDI'S Team would not allow him to meet with them to discuss the pre-Catalano furlough request; they summarily denied the furlough. CASTALDI Affidavit, at 3. Mr. Jerome Edwards subsequently indicated that Mr. CASTALDI was denied because he was affiliated with organized crime, an allegation which Mr. CASTALDI has steadfastly denied.[5/] Mr. Weger told him that "Special Cases" would not receive furloughs. CASTALDI Afficavit, at 3.

With the Court's expungement order in hand, Mr. CASTALDI applied for a furlough. As in Mr. GOLDMAN'S case, an unexplained week's delay followed. Mr. CASTALDI eventually met with his Team, and this time they approved the furlough request. During the Team approval process, the Danbury medical physician, Dr. Rogol, indicated that a furlough was the best therapy that Mr. CASTALDI could receive for his heart condition and was more than the Danbury medical staff could give him. CASTALDI Affidavit, at 4.

[4/] For some unexplained reason, Danbury officials have repeatedly denied Mr. CASTALDI a brief special emergency furlough to see his mother, despite his offer to pay all expenses of the officers who might accompany him. CASTALDI Affidavit, at 3.

[5/] Counsel for Petitioners made an offer of the testimony of Daniel Greenberg, Esq. who would testify that as Mr. CASTALDI'S attorney since 1963, he could explain his arrest record and describe Mr. CASTALDI'S denial for over 21 days before a federal grand jury that he was a member of organized crime or had connections with anyone in organized crime. Mr. Greenberg would also have testified that no perjury charges resulted from this grand jury testimony and that Judge Bonsal, the sentencing judge for the instant tax offense, had indicated in ruling on a sentence reduction motion that references in his pre-sentence report regarding organized crime were improper. Mr. Greenberg also would have refuted government information that Mr. CASTALDI lives in an extravagant style. Tr., at 67-68.

On November 8, 1974, the Advisory Committee overturned the Team's decision without permitting Mr. CASTALDI to be present or to submit information, and without furnishing him any oral or written reasons. His case manager, Mr. Gordon Pittman, later told him that his furlough had been denied because he was a "Sophisticated Criminal." Mr. CASTALDI replied that the institution had not even bothered to change the initials ("S.C.") in now labelling him "Sophisticated Criminal" instead of "Special Case."[6/] Mr. Weger also told Mr. CASTALDI that he had been denied because he was a "SophisticatedCriminal."[7/] CASTALDI Affidavit, at 4. The denial of furloughs has had an unsettling impact on Mr. CASTALDI, who, feeling miserable, just lies on his bunk in his cell most of the day.[8/] In addition, his wife, bitterly disappointed by these setbacks, suffers from melancholy and depression and is failing badly. Id., at 5.

6/ During the evidentiary hearing, the Court made note of this conspicuous fact.

"THE COURT: Well, let me ask you this. Is someone trying to be humorous from the Bureau of Prisons when they disregard 'Special Case' and are now using 'Sophisticated Criminal?'

"[Mr. WEGER]: No, sir. And in fact, the special case--well, I'm not trying to make a play on words.

"THE COURT: But somebody is making a play on initials."

Tr., at 62.

7/ Since the evidentiary hearing, Mr. CASTALDI has been granted a furlough by his Team but was again denied by the Advisory Committee. He was also denied CTC by his Team on December 2, 1974.

8/ Since the evidentiary hearing, counsel and others have noticed a pronounced deterioration in Mr. CASTALDI'S emotional and psychological health because of his inability to receive a furlough orCTC. Counsel are prepared to submit appropriate documentation if the Court should so desire.

Government Admissions

The Government has admitted that Petitioners GOLDMAN and CASTALDI were denied the requested rehabilitative programs "on the basis of findings based on institutional records" that they are "members of organized crime." Government's Response at 2 (hereinafter Resp.); see also id, at 3-5; Tr. at 20, 22-23.[9/] The Government has further acknowledged that Petitioners are members of a group of inmates "all of whom were formerly designated 'Special Cases' as organized crime members, [and] are seeking furlough releases and CTC transfers and have not been re-classified pursuant to Catalano." Resp., at 5(emphasis added). The Government has also told the Court that it will refuse to give "a full adversary hearing where [inmates like Petitioners] are denied admission to a specific rehabilitative program for reasons appearing in a prisoner's file . . . ." Id., at 7.

Mr. Weger testified that Petitioners were afforded none of the minimum due process protections required by Catalano. They were not given written notice in advance that the institution intended to make them "Special Offenders," personal hearings, or oral or written statements of the reasons why they are suspected or considered to be members of organized crime or linked with sophisticated criminal activity. Tr., at 35-36. The following

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[9/] Government counsel stated at the outset of the evidentiary hearing: "There are three denials of furloughs and in each they were denied primarily for . . .their background connection with large-scale organized criminal activity." Tr., at 4(emphasis added).

two colloquies between the Court and Mr. Weger are illustrative:

> "[THE COURT]: . . .Now, on what do you base that, that Mr. Goldman is in that [organized criminal] organization? That is my next question.
>
> "[MR. WEGER]: We base Mr. Goldman's classification -- or prior classification upon the fact that he has been in frequent association with members of this particular organiazation.
>
> "Q. Who told you that?
>
> "A. Official records.
>
> "Q. Has he had a chance to see these records?
>
> "A. No sir.
>
> "Q. Does he have a chance to say, 'That I have an uncle that looks exactly like Mr. Gallo, and every time I'm with my uncle somebody comes up and accuses me of being with a reputed Mafia figure.' Does a man have a chance to dispute the fact that an agent could be incorrect or wrong? Apparently that's not so.
>
> "A. No , it is not so at the present time. We have expunged the record, but we have not established hearings, you know, to date.
>
> "THE COURT: I have accomplished nothing, Mr. Mear, with my Catalano case if they strike the words 'Special Case' off a man's record and then turn him down for being a 'Special Case' or a 'Sophisticated Criminal' or a 'member or organized crime' [;] what have I accomplished? Tr., at 26-27.[10]

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[10] This colloquy continues as follows:

"MR. MEAR: The Government is here in a very difficult position, we understand. I don't intend to claim that this is really outside of, certainly the spirit of Catalano, although it is not something specifically ordered by Catalano, the thing that has been afforded by the procedures which are now being used, if anything, we're not really talking about a procedure, we're talking about specific denials of people because of their believed criminal activity. As far as the benefits of having the 'case' removed, we have certainly avoided the delays of consideration, we have avoided the consideration in Washington, of the furlough problem, we have avoided the parole--the problem with the Parole Board which once again has to look at the file on its own and not simply see a tab.

"THE COURT: But the bottom line result is exactly the same for the same reason.

"MR. MEAR: ...We press our discretionary right in this area as something which your Honor has heard before, I know.

"THE COURT: Yes. I don't dispute your discretionary -- the discretionary aspects of furlough, C.T.C., parole, all I'm saying is that if a man is denied a furlough or C.T.C. or parole because on his file it says 'Special Case,' what have I accomplished by saying take those words 'Special Case' of his file, but beyond that, you can deny him for the very same reasons. The whole purpose of Catalano was to give a man an opportunity to come in and say, 'Look, you want to classify me as a member of organized crime, let me know so I can defend myself.' And we do know, we have had cases right here in this very courtroom where the prison officials admitted that the man should not have been so classified. And that's without giving him a hearing, that was only after they reviewed the file without an adversary proceeding of any sort. Before they came to this courtroom they said they had looked at the file again and decided they made a mistake. So you can imagine if a man had an opportunity to be heard, that in some cases he probably would have a defense." Tr., at 27-29.

"THE COURT: And it is crystal clear, is it not, that no one of these men have had an opportunity to contest that [organized crime] characterization."
"[MR. WEGER]: That's correct.
"THE COURT: In any way? Is that so?
"[MR. WEGER]: At this time that's correct."
Tr., at 65.

In its response, the Government has claimed that it has not violated Catalano because that decision "only required that the Bureau of Prisons cease identifying cases as 'Special Cases' for organized crime connections without first according a full hearing." Resp., at 5. This position, however, is at variance with Government counsel's statement at the evidentiary hearing.

"MR. MEAR: The Government can't seriously deny, your Honor, that we're in effect asking for a cutback of Catalano. There's no doubt that this is in the spirit of Catalano and we are to some extent asking that some of that decision be reconsidered." Tr., at 31.

The Government has also argued that they have not breached Catalano because it has not yet decided whether to appeal that decision or whether to implement the procedures required by Catalano. In the meantime, the Government asserts that it should be allowed "to apply its policy of no furlough to organized crime members." Resp., at 5. The Court can take judicial notice of the fact that Judgment in Catalano was entered on October 10, 1974, that the Government has not filed a notice of appeal or sought a stay, and that more than sixty days have elapsed since the entry of Judgment. 28 U.S.C. §2107. On information and belief, Petitioners are aware of no implementation of Catalano -type procedures by the Bureau of Prisons.

ARGUMENT

I.

IN DENYING PETITIONERS FURLOUGH AND CTC WITHOUT AFFORDING THEM THE DUE PROCESS PROTECTIONS MANDATED BY CATALANO V. UNITED STATES, RESPONDENT NORTON HAS VIOLATED THIS COURT'S ORDERS.

Catalano v. United States was decided against the backdrop of an invisible administrative classification system in which an inmate was designated "Special Offender" without

> prior notice of his 'Special Offender' classification; [without being] afforded an opportunity to be heard, to present evidence, or to have counsel or counsel-substitute in order to contest the authorities' actions; [and without] a written decision setting forth the factual basis for the classification. Catalano v. United States, supra, at 4.

In administering this secret process, prison officials were guided by the amorphous phrase "organized crime," which as the Court noted, "is subject to myriad interpretations and applications." Id., at 7. As it had in Masiello v. Norton, 364 F. Supp. 1133, 1135 (D. Conn. 1973), the Court expressed its concern that "there has been no attempt by the Bureau of Prisons to avoid continued misconstruction and misapplication of the label by promulgating a workable set of guidelines for decision-making to insure that the 'organized crime' concept will be employed in a rational and non-discriminatory manner." Catalano v. United States, supra, at 8.

The Court in Catalano illustrated the "dire consequences" that flow from a 'Special Offender' classification ..." Id., at 10. For example, "[i]n most cases, the designation delays or precludes social furloughs, release to halfway houses and transfers to other correctional institutions; in some cases, the characterization may bar early parole." Id., at 8-9. The Court explicitly

rejected the Government's contention that the conferral of inmate benefits such as furlough and CTC are "within the exclusive discretion of the Bureau of Prisons, beyond the reach of the protections of the Due Process Clause." Id., at 10.

> "Social furloughs, work release, transfers to Community Treatment Centers, and the opportunity for early parole are cognizable benefits extended to all prisoners at the F.C.I. These amenities are eagerly solicited and received by the inmates and obviously play a meaningful role in enhancing rehabilitation, reducing frustration, maintaining morale, and minimizing unrest in the prison setting.
> "...
> "Thus the inmate has a large stake in being eligible for these rehabilitative programs....
> "It seems clear to the Court...that the treatment inherent in the 'Special Offender' process constitutes 'grievous loss.' Morrissey v. Brewer, (408 U.S. 471 (1972)]; Goldberg v. Kelly, 397 U.S. 254 (1969); Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951) (Frankfurter, J., concurring)." Id., at 11, 12, 13.

The "rudimentary due process" protections required by Catalano were necessary to compensate for "the lack of due process inherent in the present practices by which an inmate is accorded the special designation...." Id., at 14. These safeguards against "purely arbitrary actions" by prison officials were grounded in the "profound change in an inmate's status in prison due to the 'Special Offender' classification, as a result of which he suffers adverse consequences...." Id., at 11, 14 (emphasis added).

The Government's wooden reading of Catalano reduces that decision, as the Court has indicated to an "empty, hollow gesture."[11/] The Government purports to interpret Catalano as a bar only to what the Bureau of Prisons may call or label inmates and not what they may do to them. Catalano is not a judicial

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11/ See Tr., at 32.

exercise in semantics. It speaks to "the profound change in an inmate's status in prison" that stems from attaching some pejorative label to him -- be it "Special Offender," "Sophisticated Criminal," or "Organized Criminal." Catalano protects people, not labels.

> "It is of no constitutional consequence -- and of limited practical meaning -- that the institution [uses one label or another]....The fact of the matter is that, however euphemistic the title, [petitioners suffer serious deprivations.]
> "In view of this it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.'" In Re Gault, 387 U.S. 1, 27-28 (1967).

Regardless of the label or lack thereof, Catalano sought to protect inmates from discriminatory treatment at the hands of prision officials by requiring certain procedural prerequisites for determining the appropriateness of that treatment. Again, as the Court stated at the evidentiary hearing,

> "if a man is denied a furlough or C.T.C. or parole because on his file it says 'Special Case,' then what have I accomplished by saying take these words 'Special Case' off his file, but beyond that you can deny him for the very same reasons. The whole purpose of Catalano was to give a man an opportunity to come in and say, 'Look if you want to classify me as a member of organized crime, let me know so I can defend myself.'" See note 10, supra.

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II.

THE ONLY MEANINGFUL SANCTION AT THIS TIME FOR RESPONDENTS' CONTUMACIOUS CONDUCT IS PETITIONERS' IMMEDIATE RELEASE FROM CONFINEMENT

The Government's contumacious conduct in this case is inexcusable. The Government has freely admitted that they have not afforded petitioners any due process procedures, much less those they were compelled by Catalano to provide. The Government's suggestion that it was contemplating an appeal in Catalano is lame for two obvious reasons. First, Respondent never made "a timely motion to modify or dissolve [or stay the orders and has given] absolutely no explanation of why [he has not made] some application [since the orders were entered.]" Walker v. City of Birmingham, 388 U.S. 307, 316 (1967). "Rather [he] ignored it...[The Supreme Court] has used unequivocal language in condemning such conduct...." United States v. United Mine Workers of America, 330 U.S. 258, 290 (footnote omitted).[12/] If a stay had been denied, the Government could have promptly taken an expedited appeal to the Court of Appeals. See United States v. Dickinson, 465 F.2d 496, 512 (5th Cir. 1972). Consequently,

> "'until [this Court's] decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority to be punished.'" Walker v. City of Birmingham, 388 U.S. at 314 quoting Howat v. Kansas, 258 U.S. 181, 189-190 (1932); see also United States v. United Mine Workers, supra, 330 U.S., at 293.[13/]

[12/] "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then the courts are impotent, and what the Court now fittingly calls the 'judicial power of the United States' would be a mere mockery." Gompers v. Buck Stove Range Company, 221 U.S. 418, 450 (1911)

[13/] To date petitioners have refrained from moving that Respondent Norton be held in contempt, hoping that this matter could be resolved without taking such a drastic step.

Secondly, the Government's argument that an appeal was being contemplated is rendered even less potent by the salient fact that, despite a total of sixty days, the Government never took an appeal in Catalano. Moreover, Catalano has been the law of this District since the day Judgment was entered. The Bureau of Prisons could certainly have been allowed a reasonable time to react and implement the decision.[14/] But over two months have now elapsed and no Catalano-type procedures have been implemented; and counsel for Petitioners are under the impression that no such due process safeguards will be forthcoming.

The Government has not argued that it was ignorant of Catalano. Mr. Weger, the Associate Warden and the Danbury F.C.I. official most responsible for the administration of the furlough and C.T.C. programs, testified that he was familiar with this Court's decision in Catalano. Tr., at 8. The Bureau's duties were clearly delineated in Catalano. But even if the Government entertained a reasonable doubt about what Catalano required,

> "its proper remedy was to apply for a modification [or clarification] of this Court's ...order. Walker v. City of Birmingham, 388 U.S. 307, 316-17 (1967). Instead it took the risk that [petitioners] would be released if [the Bureau's proceeding] was not deemed the equivalent of the hearing that had been ordered. In the absence of compliance with the...order, there is no reason why, ...in the event of noncompliance, a writ should not issue discharging the prisoner." Grasso v. Norton, 376 F. Supp. 116, 122 (D. Conn. 1974). Cf. Battle v. Norton, 365 F. Supp. 925, 927-28 (D. Conn. 1974).

14/ The Government cannot be heard to argue that "the additional time and expense possibly involved [with Catalano proceedings] will seriously handicap the effective functioning of [these prison programs].' Bloom v. Illinois, [391 U.S. 194, 208-09 (1968).] Due process cannot be measured in minutes and hours or dollars and cents." Taylor v. United States, 94 Sup. Ct. 2697, 2704 (1974).

Petitioners' immediate release is not an extreme measure. Two fundamental interests are at stake here--Petitioners' interest in their liberty and the sanctity of the judicial process. This Court's order was not to "disobeyed and treated as though it were a letter to a newspaper." United States v. United Mine Workers, supra, 330 U.S., at 310(Frankfurter, J., concurring). This Court does not sit to issue advisory opinions which the Bureau of Prisons may choose to obey or disregard.[15/] The order was not obeyed. Because "respect for the judicial process is a small price to pay for the civilizing hand of law," Walker v. City of Birmingham, supra, 388 U.S.,at 321, Respondent's intransigence calls for an appropriate judicial response.

The writ of habeas corpus is the appropriate vehicle for that response.

> "Under our constitutional framework, the 'great constitutional privilege'of habeas corpus, Ex Parte Bollman, 8 U.S. (4 Cranch) 75 (1807)(Marshall,C.J.), has historically provided'a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.' Fay v. Noia, 372 U.S. 391, 401-02(1963)." Wingo v. Wedding, 94 Sup. Ct. 2842, 2847(1974).

If the Court is of the view that some form of relief short of immediate release is appropriate, Petitioners should be released pending Respondent's implementation of that relief. The federal habeas corpus statute is not a procrustean remedy. Cf. Preiser v. Rodriguez, 411 U.S. 745 (1973). The Supreme

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15/ "The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. 'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law. . . .

"There can be no free society without law administered through an independent judiciary." United States v. United Mine Workers of America, supra, 330 U.S., at 307-08(Frankfurter, J., concurring).

Court has clearly indicated that the writ of habeas corpus should be left sufficiently flexible so a court may deal effectively with any and all forms of illegal restraint. Price v. Johnson, 334 U.S. 266(1958). Habeas corpus is not a narrow, static, formalistic remedy. Hensley v. Municipal Court, 411 U.S. 345(1973). In view of the extreme hardships Petitioners have endured and their loss of over 15 days of furloughs, interim release is more than appropriate.

CONCLUSION

For the foregoing reasons, Petitioners should be immediately released from confinement.

Respectfully submitted,

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Dennis Curtis
Stephen Wizner
Michael Churgin
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CERTIFICATION

I hereby certify that a copy of the foregoing was served upon Peter Maer, Esq., Assistant United States Attorney, 141 Church Street, New Haven, Conn. this____day of December, 1974.

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

ANTHONY CASTALDI, Plaintiff, - versus - JOHN J. NORTON, Warden, F.C.I., Danbury, et al., Defendants.	:	Civil Action B-74-287
ROBERT FOUNTAIN and MARTIN GOLDMAN, Plaintiffs, - versus - JOHN J. NORTON, Warden, F.C.I., Danbury, et al., Defendants.	:	Civil Action B-74-384

United States Court House
New Haven, Connecticut
December 23rd, 1974

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

5-46

Appearances:

For the Plaintiffs:

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and
PIERCE H. O'DONNELL, Esq.

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For the Defendants:

PETER MEAR, Asst. U. S. Attorney

U. S. Court House
New Haven, Connecticut

THE COURT: The Court has before it, actually, the petitions of Messrs. Castaldi and Goldman addressed to the failure of the prison officials to grant them furloughs over a long period of time and to grant them access to the community treatment centers.

The Court has had a hearing on the matter and has heard evidence. In addition, the Court has had comprehensive briefs. The latest brief submitted by the petitioners, dated December 19th, 1974, really sets forth a detailed review of the evidence and the law.

The Court finds with respect to the furloughs for both of these men that there has been a clear violation of the Catalano opinion, both in the letter of that decision and its spirit.

Throughout the petitioners' latest brief are citations from the transcript and statements of the evidence which I adopt in my findings at this time. I think the matter was summed up fully at pages 27 and 29 of the transcript and by Mr. Mear's frank declaration that the defense in this case was really an attempt to have me reconsider Catalano. This is not to say that all the other statements of facts set forth in the brief are not adopted: I do incorporate in my findings herein the factual background of these cases as set forth in the petitioners' brief.

So, therefore, there is little question in the

Court's mind that with respect to the furlough question, the petitioners Castaldi and Goldman have sustained their burden of proof.

The question now posed is, what relief shall be granted. Obviously, I am only addressing myself to the Castaldi and Goldman cases; I am not attempting to set precedent in any of the other cases that are pending before me in which I have not had an evidentiary hearing and, therefore, no factual basis for any definitive ruling.

On the one hand, based on the facts in these cases, the Court does not see a basis for releasing the men from the balance of their terms; on the other hand, they do make out a strong case that they have been denied not only one furlough, but, perhaps, many others because of their Special Case designations which were illegally placed on their files. There is no way I can compute the exact days that these men were denied furloughs contrary to the due process clause. The best I can do, under the circumstances of these particular cases, is render a judgment which seems fair and reasonable, and I cannot do it purely through a mathemetical method.

With respect to the claims on the CTC deprivation I find that the petitioners have not sustained their burden of proof on that issue. I do not believe there is very much evidence at all with respect to Mr. Castaldi in the transcript, and with respect to Mr. Goldman, the transcript reveals

very little evidence upon which to base a remedy.

So, therefore, I deny their request with respect to the Community Treatment Centers for failure of proof.

With respect to the furloughs, I find that they have sustained their burden of proof, and, as I stated, I incorporate in my findings all the factual allegations set forth in the brief of the petitioners filed on December 19, 1974. I do not accept all their conclusory allegations.

Under all the circumstances, it seems fair and just to the Court that the following order be issued.

That it is hereby ordered that the Warden or the Acting Warden, or any duly authorized prison official at the Danbury Institution, shall forthwith prepare and execute all the necessary documents which would enable the petitioners to be on furlough from 10:30 a.m., December 24th, until 10:30 a.m., January 6th, and that the petitioners after the preparation of such papers shall be released on furlough for such periods of time subject to the usual and ordinary conditions of furlough.

In all other respects, their requests for relief are denied.

Now, that takes us to Cardaropoli versus Norton, B-74-86. In the Court's opinion, I am going to have to set that down specially.

MR. NEAR: Mr. O'Donnell and I were discussing

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ANTHONY CASTALDI :

V. : CIVIL NO. B-74-287

JOHN J. NORTON, Warden, Federal Correctional Institution, Danbury, Connecticut :

SUPPLEMENTAL JUDGMENT

This cause having come on for consideration on a petition for supplemental relief and the Court having orally ruled on said motion in open court on December 23, 1974,

It is accordingly ORDERED, ADJUDGED and DECREED that this Court's previous judgment entered on October 22, 1974, be supplemented in favor of the petitioner as follows:

1.) That it is hereby ordered that the warden or the acting warden, or any duly authorized prison official at the Danbury Institution, shall forthwith prepare and execute all the necessary documents which would enable the petitioners to be on furlough from 10:30 a.m., December 24th, until 10:30 a.m., January 6th, and that the petitioners after the preparation of such papers shall be released on furlough for such periods of time subject to the usual and ordinary conditions of furlough.

2.) In all other respects, their requests for relief are denied.

Dated at Bridgeport, Connecticut, this 31st day of December, 1974.

Sylvester A. Markowski, Clerk

BY: Vincent R. DeRosa
Deputy in Charge

5-57

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

ROBERT FOUNTAIN,

vs. B-64-465 Civil

JOHN J. NORTON, Warden, Danbury Federal Correctional Institution, Danbury, Connecticut, and MAURICE J. SIGLER, Chairman, United States Board of Parole.

- -x

PAUL J. CARDAROPOLI,

vs. B-74-467 Civil

JOHN J. NORTON, Warden, Federal Correctional Institution, Danbury, Connecticut, and MAURICE SIGLER, Chairman, United States Board of Parole.

- -x

New Haven, Connecticut
February 11, 1975

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

PETITION FOR WRIT OF HABEAS CORPUS

Appearances:

For the Government:

PETER MEAR, A.U.S.D.A.
U. S. Courthouse
New Haven, Connecticut

For the Petitioners:

DENNIS E. CURTIS, Esq.
PIERCE O'DONNELL, Esq.
ERIC A. SCHWARTZ, Student
Jerome Frank Legal Services Organization
127 Wall Street
New Haven, Connecticut

THE COURT: Good morning. We have three petitions. We have the Cardaropoli, 74-86, Cardaropoli, 74-467, and Fountain, B-74-465. How do you suggest we proceed, Mr. O'Donnell?

MR. O'DONNELL: Good morning, your Honor.

THE COURT: Good morning.

MR. O'DONNELL: Our suggestion would be since the Cardaropoli matter was raised on December 23rd, 1975 when we had the Goldman and Castaldi matter, our suggestion would be we believe that is a long outstanding matter, we would be prepared and suggest to the Court that he proceed first on the furlough matter, B-74-86, and after argument and evidence has been completed on that on both sides, that we would proceed to the parole matter.

THE COURT: All right. Perhaps opening statements would be helpful.

MR. O'DONNELL: Yes, your Honor. This morning, Mr. Eric Schwartz, a second-year law student from Yale, will be representing Mr. Cardaropoli in the furlough matter. A law student appearance form has been filed and your Honor granted the motion.

THE COURT: Very well.

MR. SCHWARTZ: Good morning, your Honor.

THE COURT: Good morning.

MR. SCHWARTZ: The first matter before this -- the Court this morning concerns an application for supplemental

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relief by the petitioner, Paul J. Cardaropoli, an inmate confined at the Federal Correctional Institution in Danbury, Connecticut, against the respondents, the Federal Correctional Institution at Danbury, and the Bureau of Prisons, for the failure to comply with the -- with this Court's memorandum of decision and judgment in this case in October, 1974.

At that time, your Honor held, and I quote: "That the respondents forthwith remove and totally expunge the special class -- case classification from all records and files maintained by the Bureau of Prisons or by any of its institutions with respect to petitioner; and two, that the respondents are hereby enjoined from reclassifying petitioners as special case unless he is accorded procedural due process as set forth in the Catalano v. United States."

Petitioner will argue this morning similar to the petitioners who were previously before the Court in Castaldi v. Norton and Goldman v. Norton last December, that the Bureau's refusal to grant petitioner a furlough on the grounds of notoriety is nothing more than an open, clear and notorious violation of the previous orders of this Court to expunge and totally remove all vestiges of the special case designation.

In addition, we will argue that no reasonable basis in fact or in law supports the Bureau reliance on notoriety, that the only possible basis of notoriety is petitioner's purported involvement with organized crime, and that the continued reliance

on purported involvement with organized crime cannot be tolerated in view of this Court's previous order in this case and the Court's judgment in the Castaldi and Goldman cases; and further, the petitioner is entitled to compensatory relief similar to that afforded Castaldi and Goldman: that is, twelve days of furlough.

Now, I might point out originally the Cardaropoli case was scheduled to be heard at the same time as the Castaldi and Goldman cases, but due to a scheduling error, we are before the Court today rather than last December.

I would now like to introduce into evidence, your Honor, the affidavits of Mr. Cardaropoli and the written testimony of Elaine J. Cardaropoli and Bernard Frisbee and have them marked for identification.

THE COURT: In your moving papers, you refer to a response by Mr. Edwards, which states: "Our furlough policy statement states that ordinarily furloughs will not be granted for persons identified with large-scale criminal activity, for persons whose presence inthe community would attract undue attention or create unusual concern. Therefore, you are denied a furlough for the above reasons."

Is that letter a response before my --

MR. SCHWARTZ: I don't think so. I was about to introduce that as evidence, also.

THE COURT: All right.

MR. SCHWARTZ: But first, I would like to have marked for identification --

THE COURT: Show them to Mr. Mear.

MR. MEAR: I have seen them, your Honor. I have -- I have no objection to the admissibility of these documents.

THE COURT: Very well. They all may be admitted, and marked.

MR. SCHWARTZ: Okay. First, the consideration of the factual issues underlying this case would help to clarify the legal points that we will try to make. Ever since June of 1974 petitioner Cardaropoli has been persistent in his efforts to obtain a furlough. At that time, in June, he first became eligible for a furlough, and made an application or a request for a furlough, to his team composed of -- at the Federal Correctional Institution, composed of Mr. Fine, his case worker, and a counselor, Mr. Bega.

The reason that Mr. Cardaropoli was applying for the furlough was that his family in Springfield needed him very much, his wife was ill and he wanted to go home to give them some moral support. And in addition, he had fulfilled all the qualifications list in the FCI Danbury police statement for a furlough.

At this time, I would also like to offer into evidenc the Federal Correctional Institution policy statement, and have that marked for identification.

THE COURT: Show it to -- well, have it marked as an exhibit. Show it to Mr. Mear.

MR. MEAR: I have no objection, your Honor.

THE COURT: Very well, it may be admitted as a full exhibit.

MR. SCHWARTZ: Section 5-C of the Danbury policy statement lists the general qualifications for granting an inmate a furlough. The first is custody. To be eligible for a furlough, an inmate must have minimum custody as of June, 1974. Mr. Cardaropoli did, in fact, have minimum custody.

B, a furlough candidate shall be physically and mentally capable of completing the trip without escort. At no point did the Bureau or the institutional staff suggest otherwise.

C, a furlough candidate will ordinarily have a clear conduct record for 90 days prior to the furlough.

THE COURT: What are you reading from?

MR. SCHWARTZ: Section 5-C on page 3, your Honor.

THE COURT: Oh, yes. All right. Go ahead.

MR. MEAR: Your Honor, what was the date of that document?

THE COURT: February 27th, 1974.

MR. MEAR: Your Honor, there is a later memorandum. I don't think there's any significant difference in it, but there is one dated 7/23/74.

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MR. SCHWARTZ: Well, just for clarification, I'm reading from the Federal Correctional Institution policy statement, rather than the Bureau of Prisons operation manual.

MR. MEAR: Okay. I think that this would supercede that, anything that was in here. I don't think there's any significant --

MR. SCHWARTZ: Well, I'm reading from the policy statement because I believe in the government's response they specifically refer to a section in the policy statement.

THE COURT: All right. Go ahead.

MR. SCHWARTZ: With respect to the inmate's institutional conduct, Mr. Cardaropoli had had, and still has, an unblemished record. He has worked in the clothing room, never missed a day of work in 20 days. He's never had an institutional shot. He's earning five days merit toward good ti a month, in addition to eight days of statutory good time. He's been an exemplary inmate.

D, a furlough candidate should have servied 90 days or one-third of his present sentence, whichever is greatest, with all statutory good time and earned good time projected for release date in the federal institution. Mr. Cardaropoli had satisfied that qualification.

E, will have demonstrated a level of responsibility which will provide reasonable assurance that the offender will comply fully with the furlough requirements. No one has ever

suggested otherwise, either in the Bureau of Prisons or at the institution.

So, Mr. Cardaropoli, confident that he was qualified to receive a furlough, went to the meeting of the advisory committee in June of 1974, and he was denied. At that time there were no specific reasons given for the denial, just some general allegations that -- about the place where he had worked and the nature of the offense giving rise to some notoriety.

At that point, Mr. Cardaropoli filed a request for administrative remedy, inquiring about the reasons for the denial; and I'd like to introduce that into evidence.

THE COURT: Yes. Show it to Mr. Mear.

MR. SCHWARTZ: Mark it for identification.

MR. MEAR: No objection.

THE COURT: Very well. Full exhibit.

MR. SCHWARTZ: The response was signed by the chief of classification and parole, Mr. Jerry Edwards, and Captain Slodysko, and read: "Your furlough application was considered by the team on June 25th, 1974, and denied on the basis that your presence in the community would attract undue attention due to the notoriety. The advisory committee concurred with the team's action on June 28th, 1974. Our furlough policy statement states that ordinarily, furloughs will not be granted for person identified with large-scale criminal activity, for persons whose presence in the community would attract undue attention or

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create unusual concern. Therefore, you were denied a furlough for the above reasons."

This was the first time in Mr. Cardaropoli's attempts to get a furlough that there had been any mention of organized crime, and even then it wasn't clear where the line was being drawn between organized crime and notoriety.

Subsequently, petitioner appealed the response from the warden to the Bureau -- Director of the Bureau of Prisons, and I would now like to admit into evidence the response of the Bureau of Prisons, your Honor.

THE CLERK: Any objection?

MR. SCHWARTZ: No objection.

THE CLERK: Plaintiff's 4, your Honor.

THE COURT: It may be marked a full exhibit.

MR. SCHWARTZ: The response was signed by Eugene Barkun, Assistant Director, and stated: "We have reviewed your complaint regarding the furlough and special offender designation and discussed your case with staff of the Department of Justice. The records of the Department of Justice show that you are a known associate of persons connected with organized criminal activity. Further, you attended a meeting in Worcester, Massachusetts of persons who were associated with organized criminal activity.

"Consequently, we find that the special offender designation is not inappropriate. Except in unusual circumstances,

which we do not see here, social furloughs are not ordinarily granted to persons significantly associated with organized criminal activity. We, therefore, affirm Danbury's staff's response to you."

I think it's significant that in this response to petitioner's request for a furlough, the Bureau of Prisons was relying entirely on petitioner's alleged involvement with organized crime. And that in the past he had only been talked -- they had only talked about notoriety, and it seems to indicate to me that the two were being used interchangeably somehow by both the people at the institution and the Bureau of Prisons.

Well, in October, your Honor ordered that the special case designation be expunged, and on November 1st, 1974, petitioner filed a new request for a furlough, and this time he met his team -- a new team composed of his car workers, Mr. Fine, and counselors Block and Spencer on November 13th. Messrs. LaBlanc and Spencer, who hadn't been before the previous team, said that they could see no reason for denying Mr. Cardaropoli a furlough, as the special case designation had been expunged, and they didn't see any other reason for doing so, so the team approved Mr. Cardaropoli's request.

Two days later, the advisory committee reviewed the team's approval and provided absolute no reasons. Furthermore, Mr. Cardaropoli had no opportunity to face the advisory team -- the advisory committee, although he had had an opportunity to

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confront his team, and as a result, he filed another request for administrative remedy to find out what the reasons were for the denial.

I would like to introduce into evidence at this time the response that was tendered by the chief classification officer. Please mark it for identification.

THE CLERK: Number 5, your Honor.

MR. SCHWARTZ: At this time, the advisory committee stated: "The advisory committee reviewed your furlough request on November 15th, 1974, and it was denied. The committee felt that the nature of the offense and the involvement would attract undue attention or create unusual concern in the community. A furlough is a privilege and not a right. It may not be granted automatically because an applicant is technically eligible, nor automatically as a reward for good behavior."

Now, I think it's significant not only that this was exactly the same reason that had been tendered five months before by Mr. Edwards, but also that at about the same time the institution was denying furloughs to other inmates not on the grounds of notoriety, but on grounds of sophisticated criminality. AS Messrs. Goldman and Castaldi, they had also received orders to expunge the special offender classification. It appears that this was merely another euphemism, notorious criminal just as "sophisticated criminal" had been used in the past; so we filed, as counsel for petitioner, an application for

supplemental relief on November 22nd, 1974, alleging that the Bureau of Prisons and the people at the institution at Danbury had never afforded petitioner a due process hearing, nor did respondent seek a stay.

And then the Court ordered the government to show cause, and on December 30th, the government replied to the order to show cause claiming two things: One, that there were reasons other than organized crime, good reasons, for denying a furlough in Mr. Cardaropoli's case. First, that petitioner's presence in the community would attract undue attention due to the notoriety, and, two, that unlike Goldman, Castaldi, he still had two years left to serve on his sentence. In fact, it's a year and a half.

We filed a reply on January 23rd to the government's response, and in the meantime, both Castaldi v. Norton and Goldman v. Norton were decided by this Court and Castaldi and Goldman were afforded affirmative relief.

I would like to introduce into evidence at this time the transcripts of the proceedings in the Castaldi and Goldman case to make them part of the record.

THE COURT: Yes. They may be admitted.

THE CLERK: As one exhibit, your Honor?

THE COURT: Yes.

MR. SCHWARTZ: We would like to contend, first, that no reasonable basis in fact or in law supports the respondents'

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treatment of petitioner. The government first says that there are reasons other than organized crime to support our denial of furlough, that organized crime is not the only reason. But by saying that organized crime is not the only reason, they are, in effect, admitting it was only one reason, and we submit that this in itself is not permissible pursuant to this Court's order in both Catalano and in the first Cardaropoli decision. That such continued reliance on "organized crime", even if only partial, constitutes clear and open and notorious violation of this Court's order, and that any lingering doubt about the applicability of the organized crime designation and its use to deny furloughs was settled in the Castaldi and Goldman cases.

The government alleges that one of these good reasons is the fact that Mr. Cardaropoli has -- well, they say two years, but, in fact, it's a year and a half left to serve on his sentence.

We would like to claim, however, that this is -- this is absolutely preposterous, that people at the FCI are given furloughs all the time.

MR. MEAR: Your Honor, we will abandon that claim today.

THE COURT: The government will abandon the claim that he was denied a furlough because of thelength of service left on his sentence. That leaves us with what?

MR. SCHWARTZ: That leaves us with one other argument, and that is notoriety. Well, first of all, I'd like to point out

that there seems to be some ambiguity present here. When Mr. Cardaropoli was denied his furlough by Mr. Edwards on November 18th, the reasons stated that his -- the nature of the offense and involvement would attract undue attention or was undue concern in the community. They seemed to be using a standard of notoriety that talked about the offense and said nothing about the person's past record.

On the other hand, the government contends that the notoriety grows out of Mr. Cardaropoli's prior arrests and his purported ownership of the Hideaway Lounge in central Massachusetts.

Well, we aren't -- we feel that this is ambiguous at best, and only indicative of the fact that there is clearly no legally fixed standard at work here. We don't know what is meant by notoriety. Is it what the government says, or is it what the Bureau of Prisons says? In any event, we are prepared to meet both arguments, because we think that both are absolutely groundless.

First of all, what about the nature of the offense and involvement? Mr. Cardaropoli was convicted for conspiracy to distribute and sale of one ounce of cocaine, one-twenty-eighth of an ounce of cocaine -- excuse me, one gram, worth $350. There are people in Danbury who are convicted of sale of much more than that who are routinely sent on furloughs. I know that for a fact from my personal experience working at the FCI.

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But even more significantly, Mr. Cardaropoli was not the only person convicted in this particular offense. His codefendant, Robert Fountain, who is before the Court today, was convicted for the same offense and went home on a furlough just last week. So to talk about the nature of the offense and involvement is giving rise to the notority is -- is preposterous, we don't see any reason why Mr. Cardaropoli should not be given a furlough when his codefendants are, why should Mr. Cardaropoli receive discriminatory treatment?

Secondly, to call Mr. Cardaropoli a well-known criminal figure in the central Massachusetts area --

THE COURT: Where does it say that?

MR. SCHWARTZ: That's in the government response. Your Honor, I don't have that before me. On page 2 of the government response the government states: "The notoriety reason as applied to the petitioner has a sound basis in fact. Petitioner has a record of 34 arrests and numerous convictions, most arrests and convictions have been related to gambling and book maker. Further, petitioner operated the Hideaway Lounge in Springfield, Massachusetts, a notorious center for prostitution, gambling and drug related offenses.

"From this record, respondent claims that the Bureau of Prisons may reasonably find that the petitioner is a well-known criminal figure in the central Massachusetts area, and that his release would attract unde public attention to both the

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petitioner, interfering with his rehabilitative program, and to the respondent, damaging public support for the furlough program."

First of all, we would like to indicate that these allegations are false, misleading misrepresentations of the facts. Mr. Cardaropoli was never arrested 34 times.

I would like to introduce into evidence the FBI rap sheet that we have listing all of Mr. Cardaropoli's offenses, and have marked for identification.

THE COURT: Show it to Mr. Mear.

MR. MEAR: No objection, your Honor.

THE COURT: Very well.

MR. SCHWARTZ: First of all, it can be noted from the FBI rap sheet that there are about 11 arrests dating from 1939 through 1962 up until the present offense, which was in 197' -- 1972, ten years later. Most of these arrests are petty gambling offenses. State -- state offenses or just petty gambling arrests, and for ten years from 1962 until 1972, petitioner was clean. No arrests, up until previous conviction. So the 34 arrests is false.

With respect to the Hideaway Lounge, Mr. Cardaropoli gategorically denies that he's the owner and operator of the Hideaway Lounge.

I would like to introduce into evidence at this time a notarized statement of the stock ownership in the Blige

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Street Corporation, which ran as the Hideaway Lounge.

MR. MEAR: Your Honor, I would state for the record it would appear that this document is not really admissible, but I really have -- to the information in it, I have no quarrel with it certainly, but I guess I have no objection.

THE COURT: Very well. It may be admitted.

MR. SCHWARTZ: The stock ownership indicates that Mr. Cardaropoli's brother, Pasquale Catalano owned one percent of the business. Mr.Cardaropoli was only a bartender, and it seems to me that the government has confused Mr. Cardaropoli with his brother. Mr. Cardaropoli, in fact, worked hard from 8:00 a.m. to 2:00 -- 2:00 almost every day, he earned very little. He had no assets. He lived in only a small house, his wife now tells me she can barely pay her electric and heating bills, and he's before this Court in forma pauperis; and the government claims that we're dealing here with a notorious criminal figure.

I'd say that that is preposterous, Mr. Cardaropoli is just a little minnow is a vast sea of criminals, he's not one of the big fish, and it was certainly not the legislative intent to deny furloughs to people such as Mr. Cardaropoli who have demonstrated such a need for -- to be with the family, to give them moral support in order to achieve some rehabilitative progress.

But we would like to further suggest that even if there had been some basis for the notorious criminal, even if we

were dealing here with a notorious criminal, that still doesn't legitimate the government's treatment of Mr. Cardaropoli, because there must be some due process afforded as was the order in Catalano with respect to special offender designation.

We are dealing here only with a different label, and yet, the allegations upon which the government relies in making its notorious criminal claim are the very same allegations that they relied on in designating Mr. Cardaropoli an organized criminal, and the deprivations are the same, too, so we don't believe that the government can just shift labels without affording anyone due process without giving him the hearing that was mandated by Catalano, that was mandated by this Court's previous decision in this case, they can't just go in and call him notorious criminal.

First it was organized crime, then it was special case, then it was sophisticated criminal, not it's notorious criminal, but it's all one and the same. Although the label differs, both are based on the very same facts.

Now, for eight months, Mr. Cardaropoli has persisted -- persistent in its effort to obtain a furlough. We would suggest that there is nothing different between Mr. Cardaropoli's situation and the situation of Messrs. Castaldi and Goldman, and we would request the same kind of compensatory relief that were given Mr. Castaldi and Goldman before this Court in December: that is, some immediate order from this Court directing the

officials at the FCI, Danbury to grant petitioner immediately a furlough for the number of days that he missed because of his treatment as a personal offender, and we compute that to be twelve days dating over the last eight months.

THE COURT: All right. Now, what test does the Court apply in reviewing requests for relief from denials of furlough?

MR. SCHWARTZ: Well, I'm not sure that what we're dealing herenecessarily with is a test for the denial of furloughs, rather, what we are dealing with here is the violation of a valid court order, in this case, the Court had ordered that the special offender designation be expunged, not just the label itself, but all vestiges of that classification, and that has not been done, that is what we're -- we're not suggesting that the Court need formulate a general standard applicable in all cases where furloughs are denied.

THE COURT: All right. Let's discuss that for a moment. You state that the Court's order should be interpreted to mean all vestiges of the facts upon which -- or the alleged facts upon which this special case designation was placed on the file. Let's assume that what you say is correct for a moment. Do you mean the prison officials must go through an entire file and where it says: Mr. A was seen in the presence of Mr. B, who is recognized as an organized crime figure, that the Bureau of Prison officials must scratch that out with a pen, is that what you are --

MR. SCHWARTZ: No,what we're suggesting is that before that information can be used to deny someone institutional benefits which -- where there are dire and significant stakes involved, that they must at least afford some minimal process, some attempt to explain the facts or present some sort of evidence, or at least allow him the opportunity to controvert that evidence without using it secretly and not providing him the basis for their organized crime designation -- what we're saying is, in fact, that he must be afforded some minimal due process as is ordered in the Catalano,and this has not been done in this case.

THE COURT: Okay. Now let's assume that a person has no organized crime mentioned in his file at all, and he applies for a furlough, and he complies with all the general criteria for a favorable consideration. Is the Bureau obligated to give him a furlough?

MR. SCHWARTZ: I don't think -- I don't think -- the Bureau is obligated to give him a furlough, but that's not really the question we're dealing with.

THE COURT: I know it. Let's start with the question we're not dealing with and work into the one we are.

MR. SCHWARTZ: Certainly, we would recognize there's a certain amount of discretion on the part of the Bureau, but nevertheless, that certain -- in certain instances when they're dealing with specific provisions which would deny a furlough to

someone as organized crime or notoriety, or any of these other things, where there is definitely something at stake, clearly in the policy statement he must be afforded the opportunity to at least present his side.

THE COURT: Well, if they are not obligated to give any reasons, what is your theory that a man is entitled to a furlough or given an invalid reason?

MR. SCHWARTZ: Well, I would think if a man is given an invalid reason, then he would have some -- at least right to -- to -- to -- an administrative remedy procedure. Or at least find out --

THE COURT: Tell me about that. How did that work? He goes before his team and asks for a furlough. They can grant or -- recommend grant or denial without giving reasons, is that correct?

MR. SCHWARTZ: Well, that -- I suppose that's true.

THE COURT: I mean in these cases the team doesn't issue a statement, do they?

MR. SCHWARTZ: Yes. But, in fact, I would say in almost -- almost all cases, except where there exists some -- some indications that the person is dangerous or an escape risk, convicted of a violent crime or presents some real danger to the community will they really deny the furlough. As a matter of fact, the statutory history of the amendment to the statute on furloughs, the amendment was in 1973, was fairly clear on what

kinds of criteria the Congress wanted the Bureau of Prisons and their agents to take into consideration when they denied furloughs.

THE COURT: Yes. But the question I'm posing to you is: When a team responds to a prisoner's request for a furlough, are they obliged by law or by regulation to give reasons for grant or denial? I'm talking about a team.

MR. SCHWARTZ: The team. I'm not sure whether or not they're obliged by law.

THE COURT: How about the advisory committee, do you know?

MR. SCHWARTZ: The advisory committee, I'm not sure. I know that when a request for administrative remedy is filed, they usually provide a reason.

THE COURT: Okay, that's what I was going to get to. In any event, although you are not sure what happens on the institutional level, there does reach a point where he files -- well, an administrative remedy?

MR. SCHWARTZ: To the warden of the institution.

THE COURT: And the warden always supplies reasons?

MR. SCHWARTZ: Well, in this case, the request was signed by the chief of classification and parole, and there was always a reason, there was always a reason, yes.

THE COURT: And that's the usual practice?

MR. SCHWARTZ: Yes, it is.

THE COURT: Based on your knowledge?

MR. SCHWARTZ: Based on my knowledge, that always happens.

THE COURT: All right. Then, in this case, we did get that, did we not?

MR. SCHWARTZ: Yes.

THE COURT: First, we got the organized crime reaction in July 15, 1974 -- or August 16, 1974, is that correct?

MR. SCHWARTZ: That's correct..

THE COURT: Then after I had that expunged, they came back with the December 3rd, 1974 --

MR. SCHWARTZ: That's correct.

THE COURT: --reason? And it is your claim that really the reasons are basically the same, but shrouded in different language, is that --

MR. SCHWARTZ: That -- exactly.

THE COURT: And based on that, you claim relief because this is a -- well, in your opinion, anyway, an open and notorious evasion of the spirit and letter of Catalano?

MR. SCHWARTZ: That's correct.

THE COURT: Would you like to add anything, Mr. O'Donnell?

MR. O'DONNELL: Not one word, your Honor.

THE COURT: All right. Mr. Mear?

MR. MEAR: Yes, your Honor, the government has no

evidence today. We view this as primarily a question of law, and we have no real question with the evidence as put forth by the petitioner.

In answering petitioner's counsel, I'd like to first start off by making a claim that isn't -- that really isn't in my response, and that is, a claim that your Honor was just talking somewhat about, and that is the failure to exhaust administrative remedies at this point.

In the second -- in this request for -- for a furlough, the petitioner has not gone beyond the institutional level and he is entitled to an appeal to the regional level and to a -- and a further appeal.

THE COURT: Which request is this?

MR. MEAR: This is the request for furlough that's at issue now, your Honor.

THE COURT: All right. Now --

MR. MEAR: And we --

THE COURT: -- could you give me the dates? We're on the --

MR. MEAR: It's a December request that I'm talking about.

THE COURT: Or is it the November 18th?

MR. O'DONNELL: November 8 request, December 3rd response.

THE COURT: Okay. So we're on the Plaintiff's Exhibit

5. All right. Now, it is your point --

MR. MEAR: He has further rights beyond that.

THE COURT: Where does he go from here?

MR. MEAR: He goes from there to the regional office, and from the regional office to the office of the general counsel. There are two more steps.

Our position, that the effect of that failure to make administrative appeal, your Honor, would be -- we claim that the petitioner, because of this failure, really is premature in arguing the reasonableness of our finding or that we were arbitrary in our finding on whether or not undue publicity would result from his release into the community.

THE COURT: Let's try to nail this down. I think we could, you know, dissect and bisect and put these words under a microscope, but in your opinion, speaking for the Bureau, other than the choice of language, do you really see any great difference between the August 16th, 1974 response and the December 3rd, 1974? I mean, let's call a spade a spade.

MR. MEAR: Does the August response, your Honor, reflect both organized crime and undue publicity? Is that --

MR. COURT: Yes. Does it reflect organized crime designation?

MR. MEAR: No, it does not, your Honor, we most emphatically deny that it does. Our position is that the terms are not interchangeable. In fact, in my opinion, if a person

is a successful member of organized crime, his release would not cause undue publicity, if he's been successful, nobody knows about it. That is not the fact situation here.

Furthermore, the organized crime, the basis for the organized crime finding in this case was based primarily upon a statement in the record that Mr. Cardaropoli attended the Little Appalachia Conference, that has absolutely nothing to do with the finding that his release would reflect -- would bring undue publicity attendant to his release, that's a fact that was -- that was primarily responsible for the organized crime designation, yet, has nothing to do with the --

THE COURT: Well, I think it's understandable, Mr. Mear, that what concerns the Court is this: That in this Court's opinion, men have been designated with a label that has been found from several instances to be based on false information, that even if the information is not false, that, as I view the law, they're entitled to due process before being tagged with this type of designation.

Now, the government didn't appeal from that opinion.

MR. MEAR: Your Honor, Cardaropoli is on appeal. This particular case is on appeal.

THE COURT: I'm talking about Catalno now.

MR. MEAR: The Catalano case through Cardaropoli is on appeal, however.

THE COURT: Well, okay, but it's the Catalano opinion

where I set all this forth.

MR. MEAR: Yes.

THE COURT: I think Cardaropoli is a -- what, a three-sentence order?

MR. MEAR: Relying on Catalano?

THE COURT: Yes.

MR. MEAR: Yes.

THE COURT: Now, until that case is upset on appeal, or if it is upset on appeal, it is the law of this District, and I am concerned if the Bureau by using different language is, in effect, avoiding the spirit of the Catalano case.

Now, if the Circuit Court of Appeals reverses, that's one thing, but until they do, and unless they do, that's the law of this District.

Now, I have a case right here in front of me that a man, apparently on all fours, complies with the policy statement. He was denied a furlough because of organized crime, he gets that removed by coming to court, and the very next denial is based on undue attention in the community. Now, factually, the petitioner denies that the basis upon which that statement could be made -- he denies the basis upon which that statement could be made. You say he owns the Hideaway Restaurant. He says, "I don't."

MR. MEAR: I felt my language was that he operated the Hideaway Lounge.

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THE COURT: Well. All right. And he had 34 arrests, and he doesn't, he has 11. In other words --

MR. MEAR: I have to apologize for the arrests, your Honor, I got that information from the Bureau of Prisons without having the arrest record before me.

THE COURT: This is the whole thing. Sometimes the Bureau of Prisons has information that can be corrected if a man is given an opportunity to be heard, that's all Catalano says.

MR. MEAR: I think we're talking about several different things here; as far as whether or not the order is reasonable, our position is that he has an appeal right and that the reasonableness would be examined on that appeal right administratively.

I'd like to point out that in excess of 20 percent of the decisions which are reviewed on the appeal level are overturned by the various administrative appellant levels, and their duty is to see whether or not there's a sound basis. You raised another question, your Honor, and I am extremely concerned about the charge made by the petitioner in this case and by your Honor thinking about whether or not this is just Catalano and Castaldi all over again. I think that the kind of thinking that's being urged forward here has the tail waving the dog. They're worried, your Honor, about vestiges. Well, what about the situation where the man was once organized crime and now apparently we can't deny him a furlough for any reason

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except for need? If there is a reason in the file, just because he was once organized crime, we can no longer deny him a furlough.

THE COURT: All right. Now, that's the conflict that I find myself in. A man has been denied, and in my judgment, quite unfairly, and unlawfully, certain benefits at the prison. Then we find that -- we eliminate the basis for those denials. Does that mean now we have to give him a furlough every time he appears?

MR. MEAR: That's the position of the Bureau of Prisons, yes.

THE COURT: That's the dilemma I find myself in. In a way, is that were so, an organized crime designee who has his label removed is in a more favorable position than a man that didn't have it?

MR. MEAR: Absolutely.

THE COURT: So that's my dilemma. And I recognize that. And I am trying to somehow use a touchstone whereby we can resolve this problem in fairness and in justice to give a man an opportunity to have a furlough without the stigma of the organized crime label. If you want to put the stigma on him, give him a hearing. If you want to remove the stigma, well, remove it in fairness. And actually, wipe it out.

Now, I read an affidavit here where two of your team members said that they saw no reason for denying him a furlough.

MR. MEAR: Your Honor knows -- the -- the team members'

opinions are based primarily upon the needs of the prisoner, and we have no doubt that the prisoner in all other respects qualifies for a furlough. I have nothing to deny that he's been a model prisoner and that he has some need at home.

Theproblem, however, is the needs of the community, is the reason for the denial of this request for furlough, and we feel that that's a reasonable basis.

THE COURT: But I've heard that in the Clifford Irving case. Now, what more "notorious" figure was there at Danbury than Clifford Irving, and, yet, the government threw in the sponge when he came into court on that case.

So this whole thing is very troublesome to me. Even in my limited experience, limited in the sense that I don't see all the furlough cases, all the CTC cases or parole cases. The government seems to be inconsistent even in this very courtroom. They throw in the sponge on Clifford Irving, but not with Cardaropoli.

MR. MEAR: I didn't participate, but I can see real differences between Irving and this kind of a case. This isn't really a notoriety. I'm not sure, I don't have Webster's before me, but I think undue publicity attached to a release is a little different from notoriety, I'm not so sure we really labeled Mr. Cardaropoli notorious as simply that he's well known. I think the perfect example: I'm from Massachusetts, your Honor, and from time to time I read the Massachusetts newspapers, and

the problem there is with the Department of Corrections there, the newspapers have gotten the names of everybody released on paper, released on the furloughs in Massachusetts, and apparently each of the furloughs is being tried in the newspapers. Everybody released, they should have been released, shouldn't have been released, for what reason. I think that's the kind of thing the Bureau of Prisons is trying to avoid, the reason why people are let go, why they're in there, their reputation.

THE COURT: I understand that completely, and that forms the other part of the dilemma we find ourselves in. Here's a man that gets, say, five years imprisonment, not particularly referring to Mr. Cardaropoli, but I can see the concern of the Bureau of Prisons. The general public knows he's received a five or eight-year sentence. A year and a half later, they see him walking up and down the street. And it is of concern to the general public. Many thoughts could go through their minds. Did he pay somebody off? Or it's because of his reputation, and so forth. Here he is walking the streets after getting an eight-year sentence, whereas, in fact, he's only walking the streets for maybe 24 hours or 32 hours on a furlough.

MR. MEAR: That principle --

THE COURT: So I understand all that, but where do we draw the line in fairness to these men that have been denied in the past because of labels put on them, that's the question I have.

MR. MEAR: The position of the Bureau of Prisons is that the simple fact that a man may have one time been labeled organized crime should not burden the Bureau of Prisons forever and tie their hands for other legitimate reasonable concerns that they have.

THE COURT: But in your brief, you say the organized crime label is not the only reason. Isn't Mr. Schwartz' argument pertinent when he says: oh, if someone says that's not the only reason I did something, it definitely implies that's one of the reasons?

MR. MEAR: Your Honor, the decision was made prior to Castaldi, which, of course, was the decision which said, as your Honor recalls -- that says that there has to be some proceeding prior to release on furlough, which in our opinion was a step further from Catalano, not precisely under Catalano, prior to that decision the decision on furlough was made.

I think that this reason stands alone. I think probably some feeling about organized crime when the original decision on furlough was made was in there, but this reasoning, the reason stands alone, and it is a rational reason, certainly not arbitrary.

Your Honor, perhaps the answer to this is once again, as we suggested, the administrative appeal. We now are -- Castaldi has come down, the Bureau of Prisons is certainly on notice that they are not -- even in terms of specific furlough --

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not to consider organized crime. I think that on that basis, the administrative remedy would be an alternative.

THE COURT: What could you, with some reasonable assurance, say with respect to how that would be handled and in what time period?

MR. MEAR: I'm not sure what your Honor means how that would be handled.

THE COURT: What I'm saying, if I deny this without prejudige, is there any way that you could alert the regional office that the Court is desirous of some expeditious --

MR. MEAR: Oh, certainly, your Honor. Certainly, that could be done.

THE COURT: -- procedure so that we don't wait for months and months on this. Itmay be. You know, we had this talk with regional directors and with officials of the Bureau of Prisons, and frankly, I rested assured that there would be an honest and sincere effort made that when a man's prior benefits have been denied based on organized crime reasons, that until and unless Catalano was upset by the Court of Appeals, they would try to clear their minds of that and judge them on the same basis as everyone else at the prison.

And perhaps you are right, perhaps we haven't gond far enough to see if that assurance --

MR. MEAR: Your Honor, I could say --

THE COURT: -- is effective.

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MR. MEAR: -- I could say that on appeal, I think your Honor and all of us could rest assured that Mr. Cardaropoli would have his case treated solely on the basis of publicity and would not at all be influenced by organized crime. By the fact that he was once organized crime, that he was once labeled organized crime.

I also could say that we certain could expedite it. That's no problem.

THE COURT: What's your answer, Mr. Schwartz, to the administrative remedies exhaustion point?

MR. SCHWARTZ: Your Honor, I'd like to say, first of all, that there is only one step after the denial by the warden to the Director of the Bureau of Prisons, an administrative remedy procedure. It is true that this was not appealed to the regional director. But there was no -- absolutely no reason to believe that the regional director would change its treatment of Mr. Cardaropoli. After all, even today, we see that the government continues to rely on allegations to deny him a furlough. We are presented with no indication at all, and have never seen --

THE COURT: Based on your knowledge and experience -- and if you would like to confer with Mr. Curtis or Mr. O'Donnell, you may -- in the usual course of events, what time period is there between a denial on the classification level to consideration by the regional office?

MR. SCHWARTZ: Well, your Honorn, the answer to that might be found in the requestsfor administrative remedy that are already in the record, because it was noted in June and August -- or in June and July, that the petitioner went through the full administrative procedure. He had been denied the furlough in June, and it wasn't until hearly two months later in August --

THE COURT: Okay. That's what I thought, and that's what concerned me. That sometimes these administrative remedies take months and months, and we have Mr. Cardaropoli in court now many, many months already.

What is your outside surmise on what you could do, Mr. Mear, in having this reviewed on the regional level?

MR. MEAR: On time, your Honor?

THE COURT: Yes, on time.

MR. MEAR: I would say we'd have an answer in two weeks, your Honor.

THE COURT: That seems to me an avenue we should pursue, then. Because if he is given a furlough, that would moot this whole question.

All right. The Court's ruling is as follows: That I am going to deny the petition for supplemental relief without prejudice to being renewed if the appeal to the regional director is unsuccessful, or if the regional director doesn't rule, say, within three weeks, that you actually have a ruling

in hand within three weeks, you could come back to this court and then I will assume that the delay is such that his administrative remedies have been exhausted.

On the other hand, if he gets relief, the case, in effect, will be moot, unless some other time the same thing happens to him and he has cause for coming back. That's the ruling of the Court.

I'll take a --

MR. O'DONNELL: Your Honor, may I be heard on a clarification point on the ruling, your Honor?

THE COURT: Yes.

MR. O'DONNELL: Am I to understand that Mr. Mear will initiate the appellate review, since he has all of the same documents that we do?

MR. MEAR: In answer to that, I would say that probably if Mr. Cardaropoli would like his best foot forward on the appeal, he probably should get everything he can together.

THE COURT: My thought would be that Mr. Cardaropoli would put forward anything he wants, and Mr. Mear will see to it that it's processed immediately.

MR. MEAR: Yes, your Honor.

THE COURT: And an answer given if -- Mr. Cardaropoli maybe has some additional cause, he may want to, as Mr. Mear said, put his best foot forward.

MR. O'DONNELL: Your Honor, if I might also be heard.

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The customary furlough, as you know from prior hearings in these types of matters, is 84 hours, approximately three days. Goldman, Castaldi relief, as we interpret it, from December, entitled them to compensatory relief for a rough -- you said you couldn't do fine mathematical calculation, but you said a rough approximation of what was just and fair and equitable in the circumstances, you approximated that to be about fourteen days of furloughs that they had been unlawfully withheld. Now, we calculate Mr. Cardaropoli's situation to be a few days short of that, about twelve days.

My question is: are we seeking a regional determination of furlough eligibility and be -- of those full twelve days, because we are seeking the same relief that Mr. Goldman and Castaldi did. That's my first question.

I'm not clear about that, although, as you know, the policy statement does allow them to give furloughs up to a month, I mean they are -- they do have authorization to do it.

THE COURT: I think you should ask for the twelve days and see what happens. Ask for the limit.

MR. O'DONNELL: And, of course, even -- and I don't want to sound ungrateful if the regional director should see it our way, but if anything less than that were afforded, we might come back to the Court for supplemental proceedings.

THE COURT: I'm here to accept all motions. Without indicating to you where the cutoff line would be in the relief

granted by the regional director, I will just leave it open and see what he does. He may deny, and so we'll just resume this meeting one or two days after the 21 days. On the other hand, he may grant full relief, and you won't come back. He may grant some relief, and you may come back. So I'll have to just wait and see.

MR. O'DONNELL: If I could add one other inquiry, your Honor. You have stipulated three weeks on our assurance that the regional director would have in his hand within 36 hours whatever we would submit.

I would petition the Court to amend its ruling to ten days to two weeks, because Mr. Cardaropoli is within an eye of furlough since July of '74, and we'll do everything -- we have been as cooperative with the government in this matter as we tried in all cases -- I can give you my personal assurance as the officer of the Court that the materials could be in the hands of the regional office with dispatch, and we would hope --

THE COURT: What's dispatch mean?

MR. O'DONNELL: 36 hours. We will prepare the papers today and have them shipped down there tomorrow morning.

THE COURT: All right. I will amend the order, therefore, to give Mr. Mear his fourteen days, plus your, say, two days.

MR. O'DONNELL: Day and a half, two days.

THE COURT: I will amend the order to read sixteen days.

Or I think more accurately, that the regional director must respond within fourteen days after receipt of the petitioner's moving papers.

MR. O'DONNELL: Fine, your Honor.

THE COURT: I think that really clarifies it. I'll give the regional director fourteen days to rule after receipt of the moving papers. If you take four days to get them in, he's going to get eighteen days.

MR. O'DONNELL: I think that's a much better idea, your Honor.

THE COURT: I do, too.

MR. O'DONNELL: Thank you.

THE COURT: I'll take a recess now. I might just say that, and we can go off the record for this.

(Recess taken.)

THE COURT: All right.

MR. O'DONNELL: The matter now before you, your Honor, is the -- the two petitions by Mr. Cardaropoli and Mr. Fountain, each challenging, based on the facts of their case, the designation by the Board of Parole for them to be Original Jurisdiction cases, and the resulting of hearing procedures that follow.

We have filed a lawsuit and appearance for them, on behalf of Mr. Cardaropoli, for Mr. Schwartz to argue, a law student appearance, and I believe that's been granted. A law

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studen appearance form was filed on behalf of Mr. Fountain, on behalf of Mr. Robert Elliot. He is now an intern in the United States Attorney's office and has withdrawn from the case, and we ask that Mr. Schwartz be substituted on that.

THE COURT: Motions granted.

MR. O'DONNELL: Thank you.

MR. SCHWARTZ: Your Honor, in the matter before the Court this afternoon, we shall argue --

THE COURT: Excuse me. Mr. Cardaropoli, you can put that window down if that gets drafty.

MR. SCHWARTZ: -- we shall argue, as Mr. O'Donnell has indicated, that the Original Jurisdiction designation employed by the Board of Parole and its in banc hearing procedure is, first, contrary to the law of this District as announced in Massielo v. Norton, 364 Fed. Supp. 1133; and, two, that it is contrary to the due process guaranteed by the Fifth Amendment to the Constitution. Because the factual and legal issues presented for decision in this case can be best understood against the backdrop of events leading up to this holding, I'd like to start by discussing the history of events, first, as respect Mr. Fountain and then Mr. Cardaropoli.

Both petitioners Cardaropoli and Fountain were sentenced on May 14th, 1973 by the District Court, United States District Court for the District of Massachusetts, pursuant to 18 U.S.C. Section 4208(a)2, which provides for immediate

eligibility for parole. Petitioner Fountain received a sentence of three years with special parole to follow.

In January, on January 29th, 1974, petitioner Fountain, after eight months in the institution, received a regular institutional review parole hearing. At that time, the Board ordered that his -- that he be continued to expiration, but then after an administrative appeal was filed to the regional directors of the Board of Parole, the Board ordered that a review on the record be set for June, 1974.

Pursuant to the Grasso decision, a new nearing was ordered for Mr. Fountain, and a date subsequently set -- set for October 2nd, 1974.

I would like to introduce into evidence, your Honor, and have marked for identification the affidavit of Mr. Fountain accounting the history of his experience with the parole board.

MR. MEAR: No objection. I've seen it, your Honor.

THE COURT: Very well. Full exhibit.

MR. SCHWARTZ: In the interim between the judge's order on the October hearing on about September 10th, 1974, the Bureau of Prisons had authorized classification of Mr. Fountain as a special offender. Prior to this date, Mr. Fountain's parole hearings had been the normal institutional review hearing afforded all prisoners, and it wasn't until October, 18 or 17 months after his incarceration, that the Board of Parole indicated that they might treat him otherwise.

On October 17th, 1974, this Court ordered that the Bureau of Prisons expunge Mr. Fountain's special offender classification posed by the Bureau of Prisons.

Meanwhile, Mr. Fountain appeared for his parole hearing on October 2nd, 1974. He was represented by Mr. Pierce O'Donnell at that hearing, and at the time, during the hearing, there was never any mention of any organized crime, any suggestion that Mr. Fountain had any association with organized crime, that he had ever previously been involved with organized crime. In fact, there was only one question that was ever posed during the hearing about organized crime at all, and that is: "Mr. Fountain, what do you know about organized crime?"

And Mr. Fountain replied, "Only what I read in the newspapers."

Well, after the hearing, the hearing examiners conferred and then they called Mr. Fountain back in, and at that time, they told Mr. Fountain that they thought that he might be involved with organized crime, and they were going to have to send his folder to the regional director for possible designation as an Original Jurisdiction case in a subsequent in banc proceeding.

And I would like to enter into evidence at this time the notice that Mr. Fountain received from the U. S. Board of Parole on October 15th to that effect, have it marked for -- an exhibit.

MR. MEAR: No objection.

THE COURT: There being no objection, it may be marked as a full exhibit.

MR. SCHWARTZ: Well, on October 10th, after -- between the hearing and Mr. Fountain's actual receipt of this notice, Mr. O'Donnell wrote a letter to John Sicoli, Parole Executive of the Board of Paroles, Northeast Region, and I would also like to have that letter and the subsequent correspondence that I'm going to be discussing admitted in evidence.

THE COURT: Show it to Mr. Mear.

MR. MEAR: No objection, your Honor.

THE COURT: There being no objection, it may be marked.

MR. SCHWARTZ: In the first letter, which is addressed to John Sicoli, Parole Director of the Northeast Parole Region, Pierce O'Donnell informed the director of this Court's decision in the Catalano case and requested that the special offender designation be disregarded as a -- on October 15th, the notice that I just had marked, issued from the Board of Parole informing Mr. Fountain that he had, in fact, been designated an Original Jurisdiction case.

Subsequently, on October 24th, Pierce O'Donnell wrote a letter to Curtis Crawford, the regional director of the Board's Northeast Region, protesting the designation and requesting reconsideration in light of Catalano. He also

requested: one, a transcript of the institutional hearing; two, that he be allowed to participate as counsel in any proceedings of the regional directors; three, expedited consideration before January, 1975, because the in banc proceedings take place on a quarterly basis once every three months, and the in banc review was not to be until January, 1975; and four, that the nature of the Parole Board's designation be disclosed to petitioner.

Then he received a response from James Newman, case analyst for the Board's Northeast office, denying all of the above-mentioned requests.

He stated, also, that attorneys and representatives would not be permitted to attend or participate at the June -- January, 1975 regional directors review of the case.

At this time, Pierce O'Donnell wrote Maurice Sigler, the Chairman of the U. S. Board of Parole, on December 18th, 1974, requesting: first, the date and location of Fountain's in banc proceeding, whether Mr. Fountain and/or counsel would be permitted to attend, participate, and if so, the nature of the ground rules for that participation; three, whether counsel would be permitted access to the records, files or other information that would be relied upon by the regional directors.

And then in a reply on December 23rd from Claude Nock, Junior, Executive Director, National Appellate Board, all of these requests were denied, also.

I would like to point out that despite all these efforts to at least have some opportunity to contest the Original Jurisdiction designation, at no point was Mr. Fountain ever informed of the evidence used against him in making that decision, he was not afforded an opportunity to be heard, to present evidence or rebut charges, or to have counsel counsel with respect to anything underlying the Original Jurisdiction designation. Even at the parole hearing before the hearing examiners, he was never asked about his association, or purported association with organized crime.

After his designation, he was not furnished with a definite or clear standard by which the organized crime designation was made. Nor was he provided with a written decision setting forth the factual bases. He didn't even know what he could respond to if he were allowed a written presentation at the in banc proceeding.

This Court held in Massielo v. Norton -- at 11 -- 364 Fed. Supp. , 1137, that in that case, an inmate when an organized crime or purported organized crime involvement was being relied upon by the Parole Board, that he should be informed before the hearing -- and I quote -- "in all likelihood, his case will be referred for an in banc consideration and be afforded an opportunity consistent with the prevailing parole hearing procedures to answer and present countervailing arguments so that the examiners and the board will have a complete record upon which

to base a reasoned judgment."

The facts indicate in this case that at no time did the Board of Parole comply even with these minimal requirements that were set forth by the Court a year and a half ago, and, indeed, a year before Mr. Fountain's October hearing.

So on January 20th, we filed a petition, a writ of habeas corpus, charging that there was no reasonable basis in fact for the Original Jurisdiction designation and -- excuse me, that there was no reasonable basis in fact for the Original Jurisdiction designation, and the Court ordered a show cause, to which the government responded on January 8th, stating: one, that there was, in fact, a reasonable basis in fact; and two, that no adverse treatment had resulted.

We would like to argue, however, in response, that both -- that there was both an explicit violation of even the standards anunciated in October, 1973 by this Court in Massiello, and furthermore, that the due process clause of the United States Constitution was violated in that this designation resulted in grievous harm.

Before proceeding further to the legal argument, I would like to outline the series of facts in the case of Mr. Cardaropoli. Mr. Cardaropoli, unlike Mr. Fountain, met the Parole Board in March of 1974, after serving ten months in custody. Mr. Cardaropoli met the parole examiners at the Federal Correctional Institution at Danbury, and we have a transcript of

this proceeding, in the possession of the U. S. Attorney. Perhaps he would like to admit that as evidence.

THE COURT: Any objection?

MR. MEAR: For what purpose is thins being entered?

MR. SCHWARTZ: Just to substantiate our factual allegations about what was discussed at that hearing.

MR. MEAR: All right. I would have no objection.

THE COURT: There being no objection, it can be marked in the Cardaropoli case.

MR. SCHWARTZ: At this time, I would also like to introduce into evidence Mr. Cardaropoli's affidavit, which Mr. Mear has already seen and we have a copy of it, your Honor.

At Mr. Cardaropoli's March hearing, there were no questions asked about organized crime at all. Questions were asked about Mr. Cardaropoli's previous convictions, about his family, about his job, about his institutional performance. The same kind of questions that are asked of most people at parole hearings, and when he went out and was called back in, he was told that the Board of Parole had decided that he was designated an organized criminal -- well, he was -- excuse me. He was told that he was to be designated an Original Jurisdiction case and referred to an in banc proceeding, although he was not specifically told that the basis for that Original Jurisdiction designation was organized crime, nor was he told at any time on what grounds they were relying in classifying him as an Original

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Jurisdiction case prior to his referral to the Board of Parole.

Mr. Cardaropoli at no time knew that the Board of Parole possessed any information implicating him as associated with organized crime. He was given no opportunity to contest any allegations. He was not informed of the evidence used against him. He was not afforded an opportunity to be heard, to present evidence or rebut charges with respect to organized crime or to have counsel present.

Only later, and even later he wasn't furnished with a definite, clear standard by which Original Jurisdiction cases are made.

Rather, in April of 1974, he received a notice of action from the United States Board of Parole that said simply -- and I'd like to enter into evidence the United States Board of Parole's reply to Mr. Cardaropoli.

MR. MEAR: No objection.

THE COURT: It may be marked a full exhibit.

MR. SCHWARTZ: It continued Mr. Cardaropoli to expiration with a review on the record in December, 1974, stating as reasons for denial: "One, your release at this time would depreciate the seriousness of the offense committed and is thus incompatible with the welfare of society; and two, there does not appear to be a reasonable probability at this time that you would live and remain at liberty without violating the law because of your past criminal pattern."

At no time was there any mention of organized crime, at no time was there any mention of the grounds underlying the Original Jurisdiction classification. At no time was he even afforded any opportunity to -- consistent with prevailing parole hearing procedures as mandated by Massielo -- to answer and present countervailing arguments, so that the examiners and the Board would have a complete record upon which to base a reasoned judgment.

Therefore, we are contending, first, that in these proceedings in the Original Jurisdiction designation, it's violated the mandate of this Court in Massielo v. Norton, which held quite explicitly that an inmate was entitled at least to be presented with any information that might be used against him in arriving at an adverse parole decision, and have an opportunity to contest those allegations or clarify, perhaps, any misconceptions.

As we have seen in the previous furlough case, the evidence upon which the Parole Board relies, or the Bureau of Prisons relies, may often be faulty. In fact, we further argue that there was absolutely no basis in fact for the designation of organized crime.

Well, Mr. Cardaropoli was -- decided to appeal the adverse parole decision to the National Appellate Board, because someone who was classified as an Original Jurisdiction case was allowed only one appeal to the National Appellate Board, rather

than to any regional director. And I would like to enter into the record that appeal and its denial.

MR. MEAR: No objection.

THE COURT: They may be entered as full exhibits.

MR. SCHWARTZ: Mr. Cardaropoli filed the appeal in April, and he requested in the appeal specifically an opportunity to contest any allegation that may have been responsible for his Original Jurisdiction designation.

The appeal was denied, but Mr. Cardaropoli did not receive a denial or any response from the Parol Board at all until October, six months after the appeal had been -- or five months after the appeal had been filed.

It was also alleged in the appeal that the Board's order to continue Mr. Cardaropoli to a progress report in December violated the Grasso decision, which the government has conceded, and that he was entitled to a new parole hearing in December.

Well, in December, Mr. Cardaropoli was to have had a progress report, and he received a notice dated January 8th, 1975, from the Board of Parole, which I would also like to have entered into evidence.

THE COURT: Show it to Mr. Mear.

MR. MEAR: No objection.

THE COURT: There being no objection, it may be marked as a full exhibit.

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MR. SCHWARTZ: The notice was similar to that received by Mr. Fountain stating simply: your case has been designated as an Original Jurisdiction case and referred to the regional directors board decision.

As of this date, Mr. Cardaropoli still has not received any word from the Board of Parole regarding the disposition of that appeal; while Mr. Fountain recently received an order from the Board of Parole following his in banc hearing denying parole for the following reasons, quote: "Your offense behavior has been rated as very high severity. You have a salient factor score of 9. You have been in custody a total of 20 months," and then denied him on the basis of guidelines.

I would have that denial entered into evidence, also.

THE COURT: It may be entered.

MR. SCHWARTZ: On the basis of these facts, your Honor, we submit that the treatment of both petitioners Fountain and Cardaropoli, pursuant to the Parole Board's regulation governing the Original -- use of the Original Jurisdiction designation and in banc hearing process, is contrary to Massielo v. Norton, and also to the due process guarantees of this Court. The designation process is shrouded in secrecy. There's no procedural due process afforded in the designation process. An inmate isn't even told on what grounds the Bureau or the Board is relying when they make the classification, and --

THE COURT: What harm is there to the error? If

there is an error. Now, let's take the situation where the two examiners recommend parole and the regional directors overrule the examiners.

Your argument would, at least at first blush, seem to have much more significance because this so-called secrecy, failure to be represented, lack of due process, worked to the detriment of the parole grantee. At least, on the institutional level. But in this case, assuming that he was not Original Jurisdiction -- an Original Jurisdiction case, the two examiners recommended denial of parole, and five regional directors confirmed that.

So if I declare the five regional directors' acts violative of due process, we're right back to the two examiners who recommended denial of parole.

MR. SCHWARTZ: Well, in Mr. Cardaropoli's case, there was never any indication of any alternative recommendation of the hearing examiners.

THE COURT: I'm not sure what that means. What do you mean, alternative recommendation?

MR. SCHWARTZ: Well, according to the regulation, the hearing examiners are to make -- are to recommend that the case be sent to the regional directors for in banc treatment and after stamped as Original Jurisdiction case, but they are to include an alternative recommendation to the regional director.

THE COURT: Yes, if the regional directors find it is

not an Original Jurisdiction case, I understand that.

MR. SCHWARTZ: That's correct.

THE COURT: That was not done in the Cardaropoli case.

MR. SCHWARTZ: Inthe case of Mr. Cardaropoli, there's no indication at all as to whether or not there was an alternative recommendation, or exactly what happened. Certainly, Mr. Cardaropoli received no word at all that there had been an alternative recommendation, nor what that recommendation was, nor any -- nor any ability to even contest that recommendation before those people who would make the decision.

THE COURT: These last statements that you are making to the Court, are they included in your moving papers?

MR. SCHWARTZ: They're included in the moving papers and the affidavit.

THE COURT: All right. Well, address yourself, then, first, to the Fountain case.

MR. SCHWARTZ: As far as -- as far as the Fountain case, there was an alternative recommendation made, but it's -- it's our contention that the government is -- is estopped from making the argument that even if there were no Original Jurisdiction designation that he would not be receiving parole. Because we are dealing here with a procedure that is tained with illegality. The Board of Parole is relying on allegations which the inmate, Mr. Fountain, has had no opportunity to contest.

It is sent up to the in banc proceeding, they see that

as part of the record, and what it, in effect, does, is it denies the inmate of a significant opportunity, perhaps to get a decision earlier than that in the guidelines.

The government, in stating that Mr. Fountain would not have been paroled earlier, relies almost entirely on the guidelines, yet, I think it's important to point out that these guidelines are only guidelines, and people are paroled before the guidelines, and the factors -- the factors that are deemed significant in paroling someone outside of the guidelines might be things like whether or not he was organized crime.

As a matter of fact, I believe in the Catalano decision -- I don't have the decision with me -- it was recognized that the designation as a special offender might have a significant effect in denying someone early parole: that is, parole before the guideline term, or in some situations, might even extend his incarceration beyond the guideline term.

The fact is that the inmate does not have any opportunity to confront the actual decision makers and defend himself against the various allegations that they're relying on.

THE COURT: Well, obviously, the examiners -- well, let me withdraw that. I won't say "obviously". But apparently the examiners seem to not be concerned about any organized crime activity, they didn't even question him about it.

MR. SCHWARTZ: WEll, that's correct.

THE COURT: Yet, they recommended denial.

MR. SCHWARTZ: Well, that's correct, they did recommend a denial, but the examiners were not the decision makers in the end -- in this particular parole process. Rather, it was the in banc -- the in banc panel, which was meeting in Kansas City this January. We had no opportunity, as we have shown, to be there or to present any evidence. And we really don't know what they were relying on at all.

THE COURT: Do you know what percentage of prisoners are granted parole prior to the time set by the guidelines?

MR. SCHWARTZ: I couldn't say that I know, your Honor, an exact percentage. I do know, however, that I and others at the Yale Legal Services Organization have represented people at parole hearings, and they have been subsequently paroled prior to the time stated in the guidelines.

THE COURT: Hasn't Judge Newman ruled that if the minimum term of the guidelines has not expired, that a person who's been denied parole has no complaint as a matter of law? Or let me put it another way: Has he ruled in this area at all?

MR. SCHWARTZ: I don't think he's ruled on whether or not the -- simply relying on the guidelines, providing no other reasons for denial, constitutes a sufficient or legitimate reason. I think what he was suggesting was that it may be a very good reason, but, nevertheless, we recognize that there are other factors that the Board of Parole might rely on that make a determination fall outside of the guidelines, either before the

guideline term or outside the guideline term, and we're not arguing that there is any obligation to parole someone before his guideline term. All we're saying is that the Parole Board does not have a right to use the kind of information used in Massielo, the kind of information it used in the Lupo decision, and the kind of information that it was using here: that is, evidence of purported organized criminal activity that might severely prejudice a person's chances of achieving early parole. And the fact that they afford them no due process at all in this determination is what we feel is the significant -- significant factor in this case.

THE COURT: All right. Why don't we leave my section question to after the luncheon period. My second question is -- refers to Mr. Cardaropoli. I suppose your argument is going to take the form that the examiners made no recommendation, or if they did, you don't know about it. So we don't even have that, as we do in the Fountain case, there's a distinguishing factor, is that correct?

MR. SCHWARTZ: We have no knowledge of any recommendations

THE COURT: Is it your claim that that, in and of itself, is a violation of the regulations which state that examiners when they send a case ahead for ruling on Original Jurisdiction, should make an alternative recommendation? Is that a regulation? Or is that a practice or a custom or what?

MR. SCHWARTZ: I believe it's in the regulations, but

it's our contention that even if they do make an alternative recommendation, that that is not really the meaningful part of the parole decision making process in an in banc proceeding, that's still illegal, even though the regulations provide that the inmate is to receive essentially an identical hearing to other inmates, that because there is this information about organized criminal conduct, which is not brought out at the hearing, which is -- in both of these instances, has been withheld, and also because of the fact it is not the hearing examiners that's really making the decision, it's the people at the in banc proceeding meeting once every three months that, in effect, whether or not there is an alternative recommendation made, there is still a serious deprivation.

THE COURT: Is the reference by the examiners to the regional directors for determination as to whether or not a prisoner should be classified under Original Jurisdiction by letter, telegram, telephone, or by what other means? Do you know?

MR. SCHWARTZ: I have no idea how the -- how the Original Jurisdiction designation is -- is made and applied at all. The only thing that the regulations say about it is that the regional director shall designate certain individuals Original Jurisdiction cases.

THE COURT: Yes. But now the examiner screened the cases --

MR. SCHWARTZ: Yes.

THE COURT: -- is that correct?

MR. SCHWARTZ: That's right.

THE COURT: All right. And there's a process or a procedure between the examiners' initial tentative determination and their alternative recommendation to the in banc final determination or conclusive determination, what is that procedure, do you know? Is it by telephone or by summary, a writing of some sort?

MR. SCHWARTZ: The hearing examiners are to make -- according to the regulations, which is all I know, they are to write a summary of the hearing which they send to the regional director.

THE COURT: And your best information is the regional director reads the summary and then makes a determination? As to whether or not it should be Original Jurisdiction?

MR. SCHWARTZ: Well, I assume that his folder or his file is also sent along.

THE COURT: Do you have any further information?

MR. CURTIS: Subject to correction, your Honor, I think the way it happens is that after each hearing, the examiner who conducted the hearing dictates into a recording machine his reasons for whatever decision he makes, that is transcribed later on, and I think he also at the same time transcribes only -- writes down only the decision on a summary sheet, which itself becomes part of the file. So at some point later on in time the

transcription is typed out and the reasons for his decision are made apparent, and at the same time, a summary sheet is in the file with the actual decision written down on it. That's -- as far as I know, that's the way the --

THE COURT: Then what happens to that?

MR. CURTIS: Well, that goes up to the regional director.

THE COURT: By mail?

MR. CURTIS: I'm not sure how it goes. I think it's taken up --

THE COURT: Or does the regional director come to Danbury?

MR. CURTIS: The regional director stays in Philadelphia.

THE COURT: So we have access to that referral -- to those referral documents?

MR. CURTIS: No, we don't have access to that.

THE COURT: So you don't know if those referral documents say: we recommend that this be an Original Jurisdiction case because of organized crime, because -- a national security case or a national or unusual interest case, or a long-term sentence?

MR. CURTIS: We don't know why the recommendation is made unless they tell you why it's made, even then you are not sure, but you can't have a contemporaneous document.

THE COURT: Is there any allegation in this case

that either one or both of these petitioners were told why they were referred?

MR. SCHWARTZ: No, your Honor, it's the contrary, that they were not told at all.

MR. O'DONNELL: Mr. Fountain was told at the hearing that because of the special offender stamp on his file, that information had to be transferred to the regional director which might lead to the Original Jurisdiction designation. I was present at the hearing, that's in the affidavit, your Honor.

MR. SCHWARTZ: In Mr. Cardaropoli's case, there was no indication of the ground for --

THE COURT: I'll pick it up after lunch.

Mr. Mear, do you have something you would like to say? I see you are on your feet.

MR. MEAR: No, no, I just -- the question I was going to respond to has been resolved.

THE COURT: Are these transmittal papers ordinarily not turned over to counsel?

MR. O'DONNELL: We are not allowed access to any of the inmate's file, your Honor. The role of counsel and the inmate is circumscribed by the regulations and the practices surrounding the hearings, and that includes a brief summary statement, although that is five minutes at the end by counsel or counsel substitute, we're not allowed access to the files, either in advance or at the hearing, in instances in a generalized way,

the lead examiner will say: what about this? what about this? and in -- sometimes the examiner such as -- I'll represent this to the Court, Mr. Random, who is the chief examiner, who is well aware of this Court's decisions in the District of Connecticut, will say: "In conformity with Lupo versus Norton, I'm now obligated to tell you the following and give you an opportunity to respond," to the best of my recollection, and my clients', that did not occur in our case. Again, the only inquiry was: "What do you know about organized crime?" And the response, which was serious at the time, was, "Only what I read in the newspapers."

THE COURT: Let me get back to the procedure by which the referral is made to the regional directors. Is it your best representation that it is the summary sheet, plus a recommendation, that's forwarded, or is the entire file of the prisoner also forwarded, or don't you know?

MR. O'DONNELL: I really don't know the answer to that question, your Honor, except they do keep files on the inmates at the regional office. I have communications which indicate all records are maintained there, and there is a master file, a very large file, which is -- each examiners -- pair of examiners have before them at the hearing.

The flow of that file, whether it comes from the Danbury records office or comes from the regional offices, is unknown to us. I must comment, your Honor, that we are,

unfortunately, very much in the dark about these matters.

MR. CURTIS: One thing that might be of interest, your Honor, the actual inmate's file that used to be kept in Washington is now at the regional office in Philadelphia and is jointly used by the Bureau of Prisons regional office in Philadelphia and the Parole Board's regional office in Philadelphia, so the two files, one at the institution and one at -- wherever the Bureau of Prisons is -- are available to the Parole Board at Philadelphia and at the institution, and the files, as far as we know, are virtually identical. But more than that, we don't know.

THE COURT: All right. We will recess until 2:15.

(Recess taken for lunch.)

AFTERNOON SESSION

THE COURT: You may proceed, Mr. Schwartz.

MR. SCHWARTZ: Thank you, your Honor.

Your Honor, this morning I was trying to point out that the treatment afforded both petitioners Fountain and Cardaropoli in the designation process itself did not comply with the requirements of Massielo v. Norton in that there was -- there were none of these due -- of these constraints that your -- present at the time they were brought in for their hearing.

I would like to continue by saying that, secondly, the Board of Parole has failed to employ even the classification standard with respect to organized crime explicitly defined by this Court in Massielo and reiterated in the Catalano decision. I could quote from the Massielo decision at 364 Fed. Supp 1135, where your Honor wrote: "The phrase 'organized crime figure' may, unless carefully defined, be misconstrued and misapplied, it may be interpreted to include, as the government's position suggests, any member of a joint venture who engages in a criminal activity involving some systematic planning and united effort. Under this definition, almost every prisoner who participated in a crime with another could properly have his prison file jacket prescribed with an OC label. The Court cannot conceive that this was the intent of the Board's enactment. Rather, in the Court's opinion, the clear import of the language of the regulation is that a prisoner may be classified as a member

of organized crime if the officials of the Parole Board have reasonable basis in fact to conclude that the inmate was a prominent figure in a structured criminal syndicate composed of professional criminals who primarily rely on unlawful activity as a way of life."

We submit, your Honor, that this organized crime designation, as presented by the government, does not even meet this standard in ascertaining a reasonable basis in fact for petitioners', both Cardaropoli and Fountain, treatment.

Especially in the case of Fountain, the government in supporting its allegation that Mr. Fountain was an organized criminal figure, said only that the petitioner is known as a close associate and codefendant of Paul J. Cardaropoli. Quoting from the government's response to order to file answer. "Cardaropoli attended the Little Appalachia Conference, Hideaway Lounge in Springfield, Massachusetts, which is a known center for gambling, prostitution and drug related activity."

We indicated this morning Mr. Cardaropoli categorically denies that he ran the Hideaway Lounge in Springfield, Massachusetts, categorically denies the said characterization of the lounge, and categorically denies that he ever attended any Little Appalachia Conference; and certainly we would submit that Mr. Fountain's mere association in this particular offense does not meet the standard expressed by the Court in the Massielo case and also in the Catalano case.

And it is apparent to us that still, over a year after Massielo, the Board of Parole has really made no attempt to avoid continued misconstruction and misapplication of the organized crime designation and has failed to promulgate a workable set of guidelines to insure that the organized crime concept will be employed in a rational and nondiscriminatory manner.

I have tried to express earlier this morning that the argument that Mr. Cardaropoli is a leader or a prominent figure in a structured criminal syndicate is absolutely not at all supported in the evidence, and in fact it seems presposterous on the fact of the evidence we presented with respect to his furlough matters.

We further contend that no matter what information the Board had before it, before the Board could determine that the petitioners could be classified as organized crime figures, they had to accord them at least some minimal due process, or even less than that, I suppose, what the Court mandated in the Massielo decision when it said that he must be "alerted that in all likelihood, his case will be referred to in banc consideration." This did not happen in either Mr. Cardaropoli's case, nor did it happen in Mr. Fountain's case. The regulations provide for no such measures, and the regulations, present regulations, anyway, were promulgated after Massielo became law in this District. And neither were they afforded an opportunity

consistent with prevailing parole hearing procedures to answer and present countervailing arguments.

The question has been whether or not this denial of due process safeguards results in any grievous loss. The government has contended that Messrs. Cardaropoli and Mr. Fountain would not have been paroled, in any event, even if they had not been classified -- we have tried to make the argument that the government is estopped from this argument because of the fact that the designation, the organized crime designation, by the regional director, is itself tainted. There was no due process involved. The fact that the regional directors and the people at the in banc hearing were relying on all kinds of detrimental information. We had no chance to respond to the allegations, but that both the Massielo decision and Lupo decision implicitly expressed the concern that information of this sort, if not disclosed at these parole hearings, and when the inmate is not given an opportunity to respond to this information, can severely prejudice petitioner's opportunity to achieve early parole.

We would argue that that is implicit in Massielo -- case.

There is an additional factor which is perhaps relevant in the case of Mr. Fountain, and that is that when the Board of Parole uses the guidelines, there is an offense severity scale, and an offender parole prognosis scale. We are not really all

that sure how the offense severity classifications are used by the Board of Parole. They're not all that specific, and it might be in a given case they would classify someone involved in a drug sale high severity or very high severity, and this, of course, affects his guideline.

In the case of Mr. Fountain, the Board of Parole apparently was operating under the impression that he had somehow profiteered in the sale of cocaine. In fact, that's not the case, and his presentence report indicates the contrary, and I think we have that and would like to introduce that into the record at this time.

THE COURT: Yes.

MR. O'DONNELL: We don't have it. I asked Mr. Mear if he had it. I believe it's not here today.

MR. MEAR: I don't have the presentence report, your Honor. I've never seen the presentence report.

MR. O'DONNELL: It's on information and belief of Mr. Fountain that the presentence report expressly states that it was a nonprofiteering involved on his part, involving $33, and nonpossession, introducing the buyer to the seller. I have not personally ever seen that.

MR. SCHWARTZ: I'm sorry.

MR. O'DONNELL: We would like that made available if the Court thinks it's important in this matter.

MR. SCHWARTZ: I would further point out,just in response

to a question that was raised earlier this morning, and that is the use of the guidelines and how many people are paroled before the guideline time. Mr. Curtis and Mr. O'Donnell have told me that it's been our experience in Legal Services office in our representation of parole cases that about fifteen to seventeen percent of inmates are granted parole earlier than specified in the guidelines. And the fact that information might be going to the in banc proceeding that is detrimental to the inmate and which severely prejudices his chances of receiving early parole requires, in our belief, that that information at least be subject to some sort of minimal due process constraints just as in the Catalano, the special offender designation would work to deprive men of valuable liberty ought to be subject to due process constraints.

We would submit, then, because these special offender classifications severely prejudice an inmate's opportunities to be paroled earlier, that there has been grievous loss. In fact, in the Catalano decision at 383 Fed. Supp, Page 350, the Court recognized: "The consequences of a special offender classification are significant. In some cases, the characterization may bar early parole."

And I think that this -- whether or not Messrs. Cardaropoli and Mr. Fountain would have paroled is not an appropriate question because the decision making process has already been constitutionally tainted by their inability to challenge

this information.

If an inmate has been baselessly classified, then there can be no doubt in our mind that he has been grievously harmed.

Furthermore, we submit that the only meaningful proceeding in the in banc process is the most invisible one, really, it is the regional level in banc consideration, and yet, the petitioner was not allowed to appear personally to answer accusations, nor would he even have been afforded an opportunity to submit a written defense or present evidence in his own behalf.

We would point out, though, that there seems to be some confusion in this respect, the letters we received from the Bureau of Prisons -- or from the Board of Parole, they categorically denied us the opportunity to appear on Mr. Fountain's behalf. And, yet, we allege on information and belief that occasionally attorneys have appeared as representatives for people at in banc proceedings, and we really don't know why the different treatment for Mr. Fountain in this case.

But we think that the record, the letters that we've received from the Board of Parole, indicate that in this case, there was definitely no opportunity to do so.

In Catalano, the Court ordered the expungement of the special offender label unless a hearing with due process guarant[illegible] were afforded because the consequences flowing from

the Original Jurisdiction designation imposed by the Board, we believe, are equally grave, and because of the regional directors designation, is not subject to any due process constraints, that both the classification and the in banc hearing process must be subject to some minimal due process constraints.

The secrecy that enshrouds them both can result in the undue prolongation of an individual's term of incarceration, which brings us to the question of relief. And we suggest two different reliefs for petitioners Fountain and Cardaropoli.

Petitioner Fountain is going to be leaving Danbury FCI and going to a CTC on FEbruary 25th of this year. His mandatory release date is in June, because of a record of administrative intransigence, as evidenced by the letters we received from the Board of Parole, our inability to challenge in any way the taint on Mr. Fountain's record and what we believe to be an open contempt of the Massielo decision and record made in October of 1974, also, all of this of which the Board should be vividly aware, we believe for Mr. Fountain, really, the only effective sanction is release from confinement.

Based on the record in Massielo v. Norton, we can entertain no reasonable hope that the Board will behave expeditiously. In Massielo, it took more than a year for him to get the relief that he was promised.

Mr. Fountain is going to be released from custody as of June, or in the alternative, if we want to give the Board

another chance to provide Mr. Fountain what we believe he is due, we think that it should be recommended that he receive a hearing expeditiously, in 15 days, and that he must be -- and that he should be released on recognizance in the interim.

Furthermore, we believe that an order could possibly be framed to say that the petitioner is to be released from confinement unless he meets the Board within 15 days consistent with procedures that we have requested, and ask that, as in Massielo, we be allowed to continue the matter if we don't get the various constraints that we are asking from the Board of Parole.

In the case of Mr. Cardaropoli, there are two points, really. Mr. Cardaropoli has a year and a half to go on his sentence, and we don't think in all fairness we could ask for immediate release, but we would like to have an immediate parole hearing affording the constraints that we have requested, and, also, especially in view of his Grasso complaint: that is, under Grasso he would have been eligible for a full institutional review hearing in December, rather than the progress report, which is all he received.

Both of these issues were contained in the appeal that we sent to the Board of Parole last year. As further -- we do believe, however, that the relief should be expeditious, that petitioner Cardaropoli has been deprived of the opportunity to get a fair parole hearing ever since March of last year, and

that he should be afforded also a parole hearing within 15 days.

THE COURT: Mr. Mear?

MR. MEAR: Your Honor, I'm not really sure how to begin. I'm still somewhat amazed. I don't know, but as I understand petitioner's argument with regard to Massielo, I believe an argument's been made that we're, in effect, in contempt of the Court's order in Massielo. I'm afraid I have to stand up for my client in that respect.

In looking at Massielo, I don't read it that way, and I am not sure how your Honor meant it to be read, but I don't think it's unreasonable for us to believe that the Massielo case was particularly tied to the facts in Massielo which we believe are different from the facts in this case. In fact, Massielo states at 1136, 1137: thus it is evident that the parole officials did not read and assess accurately the contents of the presentence report, and as a consequence, Massielo was classified with an OC label without just cause. Under these circumstances, Massielo must be given another parole hearing to contest the organized crime designation.

And I admit it's entirely possible to find some implicit or to -- or petitioner to perhaps have an opinion as to what your Honor meant in this case, but I really can't see that we're in violation of Massielo.

THE COURT: Why was he recommended for in banc consideration?

MR. MEAR: I believe my information is it was a 792 filed by Mr. Paul Coffey.

THE COURT: Now, that says he was an associate of Cardaropoli, who in turn attended Little Appalachia meeting and runs a -- and runs a restaurant that has a bad reputation. Isn't that what that says, or does it say more?

MR. MEAR: I have the 792, your Honor. Simply, it was read to me on the phone, and I took notes on it, and what appears in my response is what is in the 792.

I think certainly Mr. Fountain is the weakest of all our cases on the basis of the facts -- the reasonable basis in fact.

THE COURT: Well, you just said a moment ago you really feel that not only from the legal point of view, but you implied, certainly, from a reasonable analysis, that your client is correct, and I am saying --

MR. MEAR: Well, your Honor, I was standing up for my client on the idea that we had contumaciously and contemptuously violated your order in Massielo.

THE COURT: Well, let's say that the government addresses itself to inadvertent or negligent deviation from Massielo. Now tell me --

MR. MEAR: As far as Fountain is concerned, your Honor, I am not at all convinced that the record is very sound on his connection with organized crime. I think our main --

THE COURT: I mean, wouldn't you say, as a reasonable person, without delving into the law very deeply, putting Massielo aside, that some of our leading constitutional principles indicate that we should not attribute the characteristics of one man to another person, merely on the basis that they're associates?

MR. MEAR: Yes, I do, your Honor.

THE COURT: For example, I assume if Mr. Cardaropoli got on the stand, and I said to him, "Please tell me the names of every one of your associates who are very close to you," we'd be here for maybe 20 minutes. He'd probably start with his wife, his children, his brothers, his sisters, waiters that worked with him, other bartenders, maybe to some extent his present lawyers, and on and on and on.

I mean, I think one of the first principles we learn is -- under our system of government, guilt by association is something that strikes at the very heart of lawyers and judges and our system of justice.

MR. MEAR: Your Honor, I'm not going to oppose you on that principle, I agree with you 100 percent.

THE COURT: All right. Now, let's take Mr. Cardaropoli. He said, "Look, I didn't attend any meeting known as Little Appalachia." First of all, what is Little Appalachia?

MR. MEAR: It was a similar type meeting, your Honor.

THE COURT: Was that meeting reported in the case law anywhere?

MR. MEAR: Your Honor, I'm not an expert on organized crime, and I know that it is very meaningful to people who are in organized crime, and I just don't know who was there. It was some time ago that that meeting -- I think it was in late '50's or early '60's that that meeting was held.

Your Honor, I don't want to -- if your Honor is questioning me in this area, I don't mean to duck those questions, but our primary defense in this case is the problem of grievous law, I think we're very fortunate in this case, I think the government is --

THE COURT: We'll get to that in a minute. Let me at least get the facts straight.

Well, anyway, the man denies it. Now, I was U. S. Attorney in the early '60's, and I don't recall Little Appalachia meeting, and I was very involved with organized crime in the New England area. But that doesn't mean my recollection can't be refreshed.

But, in any event, he said, "I don't run this Hideaway Restaurant. I work there as a bartender." And I suppose implicit in that comment is that there's probably waiters and waitresses and other people associated with it, and the word "run", frankly, indicates to me, you know, some type of ownership, some type of command, somebody with authority. And with all due respect, a mere bartender usually has very little authority other than his immediate job in the operation of a restaurant.

So he introduces the document that somebody else owns it, or his brother, in fact.

Now, we know in the Massielo case they had that file all confused. They had the father and son's file all mixed up. But, anyway, one inferences doesn't necessarily lead to another.

Then the third thing he says, "I wasn't arrested 35 times. I was arrested 11 times." Well, arrests never really impress a judge too much, it's convictions that count a little more than that. And most of them are for petty gambling.

And then he says, "Look, I can't even afford an attorney," which doesn't necessarily mean that he can't be a member of organized crime, but a lawyer does make certain representations that would indicate certainly not -- doesn't have the background that would fit into my formula. So we go on and on.

Now, what about all these factual charges? You see, it's not an isolated case, Mr. Mear. I know we have been over it, this is about the eighth or tenth case I have had, and time and time again the government, through various agencies, have demonstrated to me that serious errors have been made in this field.

For example, we had a member of the Board of Parole that said he investigated three of the cases that the Bureau of Prisons labeled special case, and concluded that the Bureau of Prisons was in error.

We have had other demonstrations, such as Massielo, where the government said the presentence report supports organized crime. So I said, "Okay, let's take a look at the presentence report." When I read that, there's not a shred of evidence in that case that would -- in the presentence report, that is -- he may be a member of organized crime, for all I know, but certainly the presentence report didn't indicate that. If my recollection is correct, it said his father is a member of organized crime, and if the son continues in his criminal ways, eventually he'll become a member.

So, you know, case after case, this organized crime designation has been extremely troublesome. And I could tell that you are a little bit troubled by it in Fountain's case.

MR. MEAR: I am troubled by it in Fountain's case, your Honor, I have to honestly admit that. And as far as Cardaropoli is concerned, it was my viewing here today, and for these proceedings, that we were not going to have a trial here on whether or not Mr. Cardaropoli is a member of organized crime.

I can tell you this: that I talked to Mr. Coffey at great length about Mr. Cardaropoli, and I personally am satisifed that Mr. Cardaropoli is not a member of organized crime. I'm not prepared to put on -- and I don't think at this time that it is appropriate to put on a case on whether or not Mr. Cardaropoli is a member of organized crime.

I think the reason for that, at least in this case,

and the reason in Mr. Fountain's case, is that there is absolutely no evidence that the reason they were denied parole had anything to do with the fact that they were members of organized crime, nor is there any loss by the additional time problem or any other loss.

THE COURT: Now, we have gone over the factual problems. Why don't we get to the grievous loss, let's get to that. Now, in the Fountain case, I raised that point, I bleieve, with counsel, and we will get to that in a minute, but in Cardaropoli, the claim is made that there was no alternative recommendation.

MR. MEAR: I think the claim, your Honor, was that they weren't aware of an alternative recommendation.

THE COURT: Was there one?

MR. MEAR: There was one, yes, there was.

THE COURT: How do we know that? What do we base that on?

MR. MEAR: Well, your Honor, I was not aware that this was an issue of fact, and I could provide an affidavit for you if it is an issue of fact. I did not know until Mr. Schwartz made his argument this morning that that was a problem, or that was an issue of fact.

THE COURT: Let's find out if it has any significance. Assuming that there was no alternative recommendation, just assume that for the sake of argument, would you then admit that

there could have been a grievous loss because it was the regional directors -- if the regional directors denied him due process, arguendo, then we can't fall back on the fact that the examiners --

MR. MEAR: I think -- in this case, I think the government has a set of circumstances which I think are very fortunate for the government, that we do have something that we can look back at and say: "Look, if organized crime is taken out of this, this is what would have happened," and it isn't any different with what would have happened if organized crime were in the case.

THE COURT: Tell me about that.

MR. MEAR: Well, perhaps you were exploring with Mr. Schwartz what goes up to the regional director, and I call, did my homework at lunch break, and called and found out exactly what does go up and exactly what is in the file and what is the nature of the alternative recommendations. What goes is the case file, which usually includes a presentence report, classification as to -- the original classification as to what prison and as to what custody the prisoner would be in, progress reports, Form 792, then the summary of hearing, which is dictated or prepared immediately after the hearing by the parole officer, the parole hearing examiner.

This summary of hearing is broken down into nine different subcategories, and they're each filled out to the best -- they're filled out -- once the examiner is satisfied

that he has that information. One is the offense structure. Two is prior record. Three is relevant social history, including work, family, education, military, whther or not there's drug or alcohol, whether or not there's been a psychological or psychiatric studies in the case, any social assets or liabilities. Four is institutional progress, discipline, progress towards goals, work assignment.

Then there's release planning. There are comments, observations and comments by the representative of the prisoner. An evaluation, in other words, whether or not the guidelines -- go out the -- outside the guidelines, be it within the guidelines, the tentative decision and the reasons.

Now, the tentative decision is, where it's a case recognized as Original Jurisdiction -- it's put in there. In fact, this summary is the same summary that's put in every single case by the hearing examiners, same summary.

Now, in addition, they prepare alternative orders. One, if the recommendation of the hearing examiner is for Original Jurisdiction, he prepares an order for Original Jurisdiction. In the alternative, in case there is no -- in case the Board of Parole -- in fact, the designation Original Jurisdiction is made by the regional directors. In case they refuse to accept or they feel there's no basis in the record for Original Jurisdiction case, there's an alternative finding of how the parole should be handled on the basis of all of the

normal factors which are considered.

I both of these cases, both were found in the alternative to continue to expiration. And in the Cardarcpoli case, the reasons were given, your Honor is familiar with the release activity reason. The second reason was that -- not likely to remain at liberty without further criminal involvement.

Now, in the case of Fountain, it reflects the changes and the reasons given by the Parole Board. No longer do the Parole Board give those reasons, but they simply give the reasons in terms of the salient factor score and the guidelines, and that no facts were found to exceed the guidelines.

THE COURT: Is that in a writing?

MR. MEAR: That's the reason, I believe, given for Fountain's denial of parole.

MR. O'DONNELL: I didn't hear that last part about the reason. I'd just like to hear it again.

MR. MEAR: Simply that no longer, as I understand it, does the Parole Board give those one, two, three reasons, but give reasons based on the guidelines and on the salient factor score, and that there is nothing in the record to go beyond the guidelines or to cut short the guidelines, and neither of those reflect consideration of organized crime, and I think for us to sit here and speculate is pointless. I think we just have to go with what the record shows, which is that it was not a consideration.

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I note that Mr. Fountain is a tall man. Maybe he was denied parole because they don't like tall men. It's the same kind of speculation, I think.

I can't see any grievous loss to be protected by due process, and I think very arguably there is a due process claim here. I don't want to give it away, your Honor, but I think there probably is one there, but I don't think these are the cases. I don't think the facts are there.

THE COURT: Then you mentioned --

MR. MEAR: I'm sorry. I was simply going to add further on the Fountain case he had a pre-Grasso parole hearing where he was continued to expiration. On appeal, however, they provided for a review in June. At the parole review in June, he was again continued to expiration. That was on the basis of the record. And once again, as I said, the alternative finding was continued to expiration, and in both cases, your Honor, it is our position that the guidelines were not exceeded.

I guess, for your Honor's information, some of these regulations have recently been amended. In last week's Federal Registery, the problem on delay on Original Jurisdiction cases is apparently no longer going to be a factor, no longer do they have to wait for the regional directors to get together in Washington at their quarterly meetings, but simply the Original Jurisdiction cases are forwarded to the regional director, who then forwards them to Washington, and it's all done immediately

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when they're received in the mail, rather than waiting for the meetings. In future cases, delay is not a significant factor.

MR. O'DONNELL: Could we have the Federal Registery cite, Peter?

MR. MEAR: Yes, I do. Volume 40, No. 25, Page 5357.

MR. O'DONNELL: Thank you.

MR. MEAR: There also have been amendments as to the definition of organized crime,which, your Honor, I don't think are particularly significant to this case.

Our position is that, fine, the petitioner may have an organized crime -- the petitioner may have a due process claim, but without a loss, what we're really talking is speculatively, and in vacuum, and in pratical terms, this isn't the case for relief.

THE COURT: Anything further?

MR. MEAR: Nothing further, your Honor.

THE COURT: Would you like to reply?

MR. O'DONNELL: I think the telling point, Mr. Mear's presentation is -- Mr. Fountain was his opening, and petitioners -- Mr. Fountain appreciates Mr. Mear's typical candor. I have learned to expect that, and he has conceded to the Court that he's not convinced that the record is sound on Mr. Fountain; we, of course, agree.

It seems to me -- and I'm an advocate, I'm not neutral in this -- it seems to me an overwhelming -- on Mr. Fountain's

behalf that the Board has deviated from the Massielo, the Lupo standards ane elementary due process. I am at a loss to be able to unscramble the degree or extent of taint that might, in fact -- two parole examiners or regional director or five regional directors when they're trying to sort out a $350, 1/28 of an ounce cocaine transaction, in which Mr. Fountain was not a buyer, not a seller, did not profit, did not possess, and allegations that he hangs around with or associates with an organized crime figure, Mr. Cardaropoli.

I'll be candid, as Mr. Bernie Wrenn, who I believe has testified in this court before, and who is the chief hearing examiner of the Board of Parole has told me on numerous occasions, all parole hearings: we can manipulate the offensive vary scale: that is, low, moderate, high or very high, and in the case of a man who has a very good prognosis of nine, on a scale of eleven, that makes all the difference for Mr. Fountain, they've told us on numerous occasions: we can manipulate these things up or down, there's nothing fixed about it, especially in narcotics cases, and we just feel that Mr. Fountain should not be penalized because the process was tainted.

It was inevitably tainted when he never got an opportunity to defend what is in his file. We don't know. I was there. We don't know what was in it.

Secondly, special offender did enter into the in banc decision. I was personally told that and Mr. Fountain was

personally told that, it is in the affidavit which has been admitted into evidence. "You are being referred for in banc because you are designated special offender. And we are making an alternative recommendation, which we will not tell you."

I submit that statement is uncontroverted, and I believe that the hearing examiner came in -- or if we had a transcript of that final minute of that hearing when we were brought back into the room after they had conferred with the case worker, that fact would be borne out.

The new regulations are interesting to the extent that they no longer meet in a central place where some counsel are allowed to come and others are not. We were barred from the door forever.

I wrote several letters. Never got an affirmative response. Some lawyers go, some don't. Now nobody's going to go, they're going to mail these things around. So the key decision to designate or not designate is of paramount concern, it is the determinative factor in many respects as to what happens to a man like Mr. Fountain.

I would say, therefore, your Honor, with all due respect to the difficulty in administering an administrative system like the Parole Board. We litigate these matters, they defend these matters, they have a difficult job. I think they made a mistake. And they did it unconstitutionally, as well. And the fact it was done unconstitutionally, the fact that they

had guidance from this Court in the past, the fact that we have been barred at every turn to set the record straight, to put on a defense, that elementary right to be heard, rather, we had to tilt with unknown windmills, I think there's only one remedy that's appropriate, your Honor, and I would submit that that's Mr. Fountain,who the institution believes is fully capable of adjusting, he's been recommended for -- for CTC the day you had his special offender expunged, he's had furlough after furlough after furlough, he's going to CTC in Boston. He's one semester away from a Bachelor's Degree at the University of Massachusetts. He's got a good job as an athletic director for the CYO waiting for him, and I think the only remedy in this case is thathe be released from confinement because his constitutional rights have been withheld.

However, I think that there may be some question about that. So I would submit an alternative suggested relief, which is, namely: that which was fashioned in the Massielo case a couple of months ago, if the Board of Parole, and they may, because Mr. Mear has been diligent, like Mr. Dow was in Massielo, the Board of Parole may very well want to reconsider their decision, and whatever -- need to be on our part to petition for such consideration, we would do it. And I would suggest that pending any review or reconsideration that Mr. Fountain be released on his own recognizance. He's not a threat to the community. I think that stems -- is treated

amply by our affidavits and the facts of the case. He has a structured program waiting for him. He will show whenever required, and this will give the administrative process a chanc to purge itself. To vindicate itself. And maybe give us a chance to find out what it is that they have been holding against him and give us a chance to respond.

Today is the first day that we have ever heard about these things, the first day.

Thank you.

THE COURT: Mr. Schwartz?

MR. SCHWARTZ: With respect to Mr. Cardaropoli, your Honor, we also feel that there was no reasonable basis in fact for the classification or his designation as an organized criminal. That there had been a mistake in the facts. Simila to the kind of mistake in Massielo, or at least there was no conformity to any objective standard or any reasonable standard at all. And that that cannot be used to -- that shouldn't even enter into the parole consideration.

If this information is possibly detrimental -- we don't know. And we'll say that quite clearly — we don't know to what extent this information affected the Parole Board's decision, the point about the alternative recommendation, even there we don't know the extent to which the information, the allegations about Mr. Cardaropoli's purported organized criminal associations may have affected that very alternative

recommendation.

The fact that there was an alternative recommendation, as Mr. Mear has told us, really doesn't change the fact that there was -- that there was a taint. That this information, prejudicial information, was taken into consideration by the Board of Parole, and may very well have precluded a more favorable parole decision.

We feel that this cannot be allowed in view of this Court's previous holdings in Massielo and in Lupo, where there were mistakes where the Parole Board had not complied to certain reasonable standards of fact, and that it is no different in this case, and that the only appropriate remedy is a new parole hearing at which there is some assurance that these matters are brought fully out into the open and such that Mr. Cardaropoli would have a chance to controver those allegations before the Parole Board.

THE COURT: Where does the Court's investigation into the parole decision stop? Now, when they start labeling a man, and we do know from prior cases and prior evidence, that that label had a distinct and immediate effect upon certain benefits at the prison, we were able to have a causal connection determination.

Mr. Fountain's case, for example, when they remove the special case designation, all of a sudden he gets three furloughs. Which only, in my opinion, strengthens this Court's

prior opinions, but the special case designation had grievous effects. When it was removed, all of a sudden he gets three furloughs.

Were do we draw the line? For example, let us assume -- and this is not our case, but I have to think of the overall ramifications of any decision -- let us assume that a man enters this court and says, "I was denied parole because I firmly believe that in my presentence report it said I was cruel to my wife. And really I wasn't."

And the U. S. Attorney submits a response that indicates that guidelines haven't been reached, the seriousness of the crime and various other factors, which easily could have been the basis for a denial of parole. And then his lawyer shows up in court here and says, "Yes, but those two examiners may have picked up that false information on page 18 of a 35-pa presentence report and used it against him. Let's have a new hearing." Where would all this end? This is why at some stage I have to decide where the line is drawn between the discretionary powers of the Board and abuses of discretion.

You stand up and say, "Well, we know or we feel or we have an intuitive belief that Mr. Fountain was denied parole because somewhere in his file it indicates he was a friend of Cardaropoli, and Cardaropoli in turn has something in his file which indicates he's a friend of organized crime."

Mr. Mear stands up and says, "That's not true at all,

your Honor. He was denied parole because the guidelines have been reached, and only very small percents of people are released prior to their minimum guidelines. He has prior difficulties which indicate to us the seriousness of the crime, indicate he might go back into crime, and on and on and on." Who makes that judgment. Am I going to sit here and listen to -- what? Fifteen, twenty furlough cases and parole cases a week?

MR. SCHWARTZ: Well, it seems to me, your Honor, first of all, we're dealing here with a case that can be distinguished from the person claims thathe was not really cruel to his wife in the sense that we're dealing here with a special parole procedure, in banc proceeding, where the inmate never has an opportunity to appear before the people who are actually making the decision. In fact, what the decision makers are really receiving is something very similar really to the progress report based on Mr. Mear's descriptions of what goes to the regional director, and this Court has recognized before that there is -- can be a significant difference between a mere progress report or an institutional review hearing where the inmate is present, is able to face the decision makers; and there are certain subjective indices, let us say, that the decision makers have an opportunity merely to ask the inmate any questions about things that might bother them. There is the staff, the institutional staff present to provide any points of clarification. The assurances that someone will be able to bring everything out

on the table really are much greater in an institutional review proceeding than in a progress report.

THE COURT: Yes. My analogy may not be a good one, and my mind is still open, but let us assume that the case is decided by the Court of Appeals, and the Supreme Court takes certiorari and later dismisses the case for -- taking certiorari improvidently. The case goes back to the Court of Appeals, a mandate is issued, and the decision of the Court of Appeals is the controlling one.

So far, am I correct?

MR. SCHWARTZ: Yes.

THE COURT: All right. Now, in this case, I say the jurisdiction taken by the five regional directors was improvident. The government says, "Okay. So it was improvident. Where do we go from there? Do we go back to the decision of the two examiners? From which Original Jurisdiction was taken improvidently, the two examiners say, "Denied." So where's the loss?

Now, if your case was two examiners saying, "We grant parole," and Original Jurisdiction reverses that, then I think I clearly see a grievous loss. However, here, I'm still trying to focus by way through to see your point.

If I hold that there was improvident Original Jurisdiction taken, where do we go from there? You are saying we go back to a release of the men, and the government says, "Why

release them because it was improvidently granted?" And alternatively, you say, "Give them another hearing."

The government says, "Why give them another hearing? They've already had their hearing and two examiners said, 'Denied.'" In the event that Original Jurisdiction should not be taken.

In other words, what I'm saying to you, Mr. Schwartz, is this: What is the difference between two examiners saying, "We suggest Original Jurisdiction. However, if Original Jurisdiction is not found, parole should be denied," than my saying Original Jurisdiction should have been denied, which it wasn't, why aren't we right back to the same starting point, the denial?

MR. SCHWARTZ: Well, we would respond here that what is, in effect, happening is that the -- even the hearing examiners at the institutional level who were conducting this hearing and then making an alternative recommendation, are given the opportunity to base their denial, perhaps, or at least one of the major factors that they can take in to consideration in their denial and the alternative recommendation they send up to the regional directors on information which the petitioner has had absolutely no opportunity to contest.

THE COURT: Isn't that true in every parole case, almost?

MR. SCHWARTZ: Yes, but --

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THE COURT: A parole seeker walks in -- I have never attended one of these, but from what I heard in court -- they walk in and questions are asked, answers given. When that parole seeker leaves the room, it might well be somebody in that room might say, "He's too tall. I don't like his looks. I think he's a fresh boy," et cetera, et cetera, et cetera. And when they issue their opinion, they list their reasons.

Now, am I to go behind the doors of every parole case to determine if the reasons given are based on other than what the two examiners or the regional directors say? And if so, where do I draw the line?

MR. SCHWARTZ: Your Honor, first of all, I think certain guides are provided by the kinds of factors that the Board of Parole takes into consideration in their guidelines procedure, they take into consideration offensive severity and the offender parole prognosis on this guideline table, and it seems to me that one of the major concerns of the Parole Boar is not releasing people that they think have a -- substantially repeat of their offenses, and it seems fairly clear to me that I can understand their concern and the extent to which allegations of organized criminal activity -- something that has been ongoing, something -- a permanent criminal involvement would certainly affect the Board of Paroles assessment of the person's likelihood of staying clean.

THE COURT: Then we get back to my question, when the

OC label is removed, does that mean that the Board has to go through and erase or scratch out or block out every single item that refers to this type of activity?

MR. SCHWARTZ: No, your Honor, we're not making that argument at all. I think, rather, we're making the argument that any -- and we're not saying that they have to parole them, all that we're saying is that before they can use this information which can significantly prejudice their chances of making parole -- and further, more, in this case, submits them to an entirely different parole process, different treatment, that they at least have the right to contest those allegations or respond to them in the hearing process. We're not saying that they must be paroled, we're saying that they're only entitled to respond to those kinds of specific allegations in a hearing procedure.

THE COURT: All right. Anything further?

MR. MEAR: Your Honor, I simply wanted to point out in response to Mr. Schwartz' last argument that Mr. Fountain was asked what he knew about organized crime, and that Mr. Cardaropoli was asked in some detail about the bar, the Hideaway Lounge.

THE COURT: About the what?

MR. MEAR: About the bar, the Hideaway Lounge. I have nothing further to add.

MR. O'DONNELL: Your Honor, one point on line drawing,

I think that's related with the ultimate issue in this case, and the case we had this morning, I don't know if there's -- I don't mean there's any trick or glib phrase or standard that one could make up off the top of their head, or even after -- well, one might be able to come up with a good standard after a prolonged study.

I think, unfortunately, in this area where constitutional rights are evolving as the Supreme Court explicitly recognized just eight months ago in Wolf versus MacDonald, that we tailor the process that's due to the interest that's at stake.

Now, in Catalano, the Court was faced with special offender label, or special indication of the Bureau of Prisons. The Court found that there were disabilities that -- I won't say virtually automatically flowed from that designation, but almost automatically.

THE COURT: Well, there was evidence in those cases. I remember one exhibit saying something to the effect: "Your request for CTC denied - special case," or something like that. I think we had very candid testimony where witnesses said, "I did say to the prisoner, you are a special case, and as a result, don't expect early parole and don't come around looking for furloughs."

I had quite a bit of evidence. Now what's happening is allegations are being made that the Bureau of Prisons, and

possibly the Board of Parole, knowing of Catalano and Massielo are now starting to use different words to come out with the same result. Shrouding the organized crime label in language that will pass muster. The government denies this.

On the other hand, you point out that he's denied release on furlough for organized crime activities at point one. Then Massielo comes out, they deny him, sophisticated criminal. Catalano comes out, and they deny him --

MR. O'DONNELL: Notorious person.

THE COURT: -- notorious person, and you are saying: well, my goodness, can't you draw inferences here that what they're doing is using rhetoric and labels to get around the very thing that upset the Court in the first place, and that was a label?

And I am saying: well, maybe you have a point. But maybe you don't have a point.

MR. O'DONNELL: I may not.

THE COURT: Because the government is claiming: "We're not doing that. We gave this man three furloughs. If we were out to shaft him for being organized crime, where is the history of it?"

MR. O'DONNELL: I think I might be able -- I'm not saying that there's anything talismanic whatsoever in the administrative bureaucracy of the Bureau of Prisons or the Board of Parole when it comes to a label. It is that group of

disabilities or benefits that come along with the label.

Now, I'm going to recount an incident that occurred at the December parole hearing, which I think really bears right down on this problem, may help us a bit. I represented an inmate by the name of Mr. Johnson, who had been a special offender. This Court ordered his special offender expunged in late November under Catalano.

We go into the parole hearing, I believe it was December 8th, and Mr. Wrenn, I believe, the chief examiner was there that day, and I brought up the matter early on in the hearing. I said, "Now, do your records reflect that we have had this expunged?"

Mr. Wrenn says, "Not only does it reflect it, we're not going to go into that, we're not going to talk about that. Now that it's been expunged, it's got nothing to do with us, and no in banc will result."

Well, pleased at hearing that, I didn't pursue the matter. Now, the point is that he did get it referred to in banc, because he had been expunged.

Now, the Board has maintained in past litigation that they look behind this, but the Court found -- they look behind the Bureau of Prison's label -- but the Court found in Catalano that it does have an impact.

Our concern, your Honor, is that we have two men, both of whom have 792 forms on them. Mr. Cardaropoli has one and Mr.

Fountain has one. Now, that's an important forum in the whole Department of Justice. We all know that. Sent by the same man from the special task force in Hartford, Mr. Paul Coffey, a special attorney in the United States Department of Justice. That's in the file. It was probably, I specu'-- well, on information and belief, it was the basis for the -- well, originally, I guess, organized crime, and then the special offender designation.

We have no reason to believe that this document laden with very serious charges of organized criminal activity, which your Honor knows follows these men through the entire Bureau of Prisons and Board of Parole bureaucracy, this is in the file and it's not the same as the allegation that a man beats his wife.

On a scale of interest -- which the Supreme Court and the other courts, as this Court, has held in Catalano -- interest must be scaled process that is -- don't depend upon the interest that is at stake and the grievous harm that flows.

We submit, your Honor, that with the 792 forms, with Mr. Mear's candid statement in the response that Mr. Fountain was based on, Mr. Cardaropoli who was based on the Hideaway Lounge and some meeting in central Massachusetts. We're not left to speculate in this case, and this is an evolutionary process of decision. And we may be in this courtroom next month, and it may be a completely different case.

Our contention, however, and I am sorry if this isn't satisfactory enough, is that wherever the line is drawn, your Honor, these men fall well within it, and we believe we haveproven -- we have met our burden of proof that there has been a denial of due process, and that relief should flow and we've already suggested --

THE COURT: I certainly recognize as these cases are evolving that I'm getting closer and closer to the line in my own mind where the Court should interfere with the internal management of the Bureau of Prisons and the Board of Parole. So far, I haven't had much trouble determining -- although I don't know what the Court of Appeals will do or whether they will agree with me determining on which of the sides the Catalanos, Massielos, Goldmans, Castaldis, et cetera, have fallen.

Now, I get the feeling I'm starting to get very close to the line that I haven't really drawn yet, but I'm going to have to draw sooner or later, but I suspected this, I knew the Massielo would have much more benefits to those coming into prison than those in the prison, unless there was an allout concerted effort by the Bureau of Prisons officials and the Board of Parole officials in justice and in fairness to apply the principles of that case to the men in prison, and I hoped that they wouldn't just remove the label and then think of some other way to get the same result. So I recognize that. And it's the type of thing that you just told me in the Johnson case

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where Mr. Wrenn has said, "Okay, we've not only taken off the label, and we're not considering it," and he's a man of candor and respect, and I am pleased to hear that, but it is these cases where the organized crime label is floating in the background and the label has been put on, perhaps, quickly and inappropriately and then taken off, because there's some stigma still floating and weaving its way through these hearings, and I have to draw the line of where -- how deeply I'm going to search to find out.

You know, we could discuss this all day. Because we haven't even defined organized crime yet --

MR. O'DONNELL: You have, your Honor.

THE COURT: -- to the satisfaction of many, I was about to say.

MR. O'DONNELL: Excuse me.

THE COURT: To my own satisfaction, yes, and I base that not only on research, but on my own background as U. S. Attorney.

Very frankly, I say this with great candor: you had to be a very sophisticated ranking official before we even considered a person in our files as a member of organized crime. We always felt that it was part of that organization, loosely called the Mafia or Cosa Nostra or this corporation, and you had to be a ranking member of it, and I think I have often analogized organized crime to the narcotics business. You have the men at the very top, the importers, all the way down to the

couriers, all the way down to the junkies, all the way down to the junky's junkee, and technically, I suppose, some very enthusiastic prosecutor could pick up some sick addict on the street who is selling some $5 bag to insure his own habit and say, "I have just nabbed a member of organized crime," because if you trace the chain, we go all the way to the top of some official in Chicago or New York who is the ranking superior in this massive conspiracy.

Well, we just never considered that that little fish on the street was a member of organized crime. And, yet, I suppose, there are some that want to rack up points and say they've knocked off a member of organized crime. But I've defined it, and that's the way I look at it, and I suppose some day it's affirmed by the Court of Appeals that the Bureau of Prisons and the Board of Parole will accept, finally accept that definition or the formula and really not pay any attention to some reporter's mention of a person who is a member of organized crime, or even some probation officer or even some very enthusiastic prosecutor, and just ignore it.

That's why I was happy to hear you relate the story in the Johnson case, so until that's changed, I just have to follow my own rulings.

MR. O'DONNELL: Your Honor, in that respect, I don't want to seem unduly contentious, but the plight of that unfortunate junky you analogized to isn't far removed from the

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gentlemen who sit in this courtroom today, because whether they deserve it or not, they were stuck with the stigma of organized crime. They had to cometo court to get it removed, and it's followed them right through the system, and if there's lines to be drawn, it would seem to me at the very least that a man who had a special offender on his file, who had to go to Court to get it removed and at the same time was being denied parole from what we submit is this Byzantine sytem, he falls within that due process protection.

I'm candid to say, I do not know where else the line might fall, but in this case, your Honor, I respectfully submit that these men fall within that line.

THE COURT: Well, I think we're close to a line, but I'm not sure on which side. I'm just going to have to think about it.

Let me ask you this, one final question: Do you think any further moving papers or briefs will be helpful? Have any other judges ruled along these lines? That I may not be familiar with?

MR. O'DONNELL: I think you are out there all alone, your Honor. I know of no others.

MR. MEAR: I know of no others.

THE COURT: All right. I'm just going to have to reserve.

I will deny all motions for immediate relief, for

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release on recognizance, for temporary relief, and I will try to work on it just as fast as I can.

(Hearing adjourned at 3:45 p.m.)

U. S. DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
PHILADELPHIA REGIONAL OFFICE
SCOTT PLAZA II
PHILADELPHIA, PENNSYLVANIA 19113

March 6, 1975

Legal Services Organization
Yale Law School
New Haven, CT 06520

Attn: Eric Schwartz

Dear Mr. Schwartz:

We have considered the material that you forwarded in your letter of February 13, 1975, received February 18, 1975, with regard to the furlough request of Paul Cardaropoli, Register No. 25251, an inmate at F. C. I. Danbury, Connecticut. Although the material was not filed according to the procedures of the Administrative Remedy Policy Statement 2001.6A, dated 10/18/74, in that the appeal was not filed by Mr. Cardaropoli, we did consider it, in the light of Judge Zampano's suggestion, as such an appeal. I might also point out that the time allotted for review of this administrative remedy was one-half of the time allotted to the Regional Office for consideration of similar appeals.

The officials at F. C. I. Danbury removed the special case classification from Mr. Cardoropoli's records based on the order of Judge Zampano dated October 24, 1974. The expungment of that designation did not however, change the facts of Mr. Cardaropoli's case. The material that was furnished to us by various law enforcement agencies with regard to his long involvement with criminal activity in the Springfield, Massachusetts area remains in his case file. The institution would be derelict in it's responsibilities if it were to fail to consider the significance of the material which is available to them in the determination of questions such as furloughs and other classification type decisions.

The only question that is being raised on this administrative appeal is the decision of December , 1974, of the administrative remedy that was filed by Mr. Cardaropoli on November 18, 1974. The question raised in that appeal was a Christmas furlough. This request would fall into the category of a social furlough, pursuant to the provisions of Policy Statement 7300.12C, paragraph 5b (5).

The decision of the officials at Danbury in denying that social furlough appears entirely appropriate in light of the almost two full years that remains on Mr. Cardaropoli's five year sentence. Also considered is the fact that the U.S. Board of Parole has just recently continued Mr. Cardaropoli to expiration. Social furloughs are not to be automatically granted, merely, because an inmate has minimum custody.

Upon review of the material which was furnished to us for consideration of this appeal, we have learned that the involvement of Mr. Cardaropoli in the Hideaway Lounge is not exactly as we had been informed previously by other agencies of the criminal justice system. In light of this fact, in conjunction with the information we learned concerning Mrs. Cardaropoli's apparent bad health, it is quite possible that Mr. Cardaropoli should be appropriately considered for a furlough pursuant to the provisions of 7300.12C, paragraph 5b(1). The purpose of such a furlough is to respond to specific family crisis/emergencies, and/or urgent offender needs, when direct personal interaction appears best suited to the accomplishment of the correctional objectives. The requirements of this type of a furlough could possibly be met by Mr. Cardaropoli with proper documentation received from medical personnel involved with Mrs. Cardaropoli's treatment. I, therefore, would have no objection if the officials at Danbury favorably considered Mr. Cardaropoli at this time for a furlough to respond to his family crisis.

I am advising Warden Norton, by copy of this correspondence, of my position with regard to the situation of Mr. Cardaropoli.

Sincerely,

E.O. Toft
Regional Director

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PAUL J. CARDAROPOLI -vs- JOHN J. NORTON, Warden, Federal Correctional Institution, Danbury, Connecticut	:	Civil No. B-74-86

AFFIDAVIT

Paul J. Cardaropoli being duly sworn, deposes and says:

1. I am the petitioner in the above-captioned matter. I am incarcerated at the Federal Correctional Institution in Danbury, Connecticut where I am serving a 5-year sentence imposed on May 14, 1973 by the United States District Court for the District of Massachusetts.

2. My scheduled mandatory release date from confinement is now September 1976.

3. In June 1974 I first became eligible for a furlough. I had fulfilled all the requirements for furloughs outlined in §5(c) of the FCI, Danbury Policy Statement and I wanted to be with my family in Springfield, Massachusetts. My wife is not well, and requires an operation on her bladder. My step-children and I were always very close, and they want to see me. The morale of my step-son, Paul, has been very bad. He is failing in school, and has lost interest in things that once excited him. The whole family has been very depressed.

4. My institutional record at FCI, Danbury is unblemished. I have been in minimum custody since June 1974. I have excellent job reports from

my supervisor, Mr. Mason, in the clothing room. I have never missed a day of work in twenty months. I am now earning five days meritorious good time each month plus eight days of statutory good time.

5. Despite this record, and my need to be close to my family, my Team at FCI, composed of Mr. Fine, a caseworker, and Mr. Baker, a counselor, denied my request for a furlough in June 1974. When I asked Mr. Fine why my request was denied, he made some general references to the place where I had worked as a barman, but he made no mention of organized crime. I immediately filed a request for administrative remedy to the Warden, asking why my furlough was denied. The response, signed by Mr. Edwards, Chief of Classification and Parole, and Mr. Slodysko, stated: "Our furlough policy statement states that ordinarily furloughs will not be granted for persons identified with large scale criminal activity...for persons whose presence in the community would attract undue attention or create unusual concern....Therefore, you were denied a furlough for the above reasons." I appealed this denial to the Director of the Bureau of Prisons, and was again denied, this time on the ground that I was associated with organized criminal activity. No mention was made of notoriety.

6. In October 1974, in the above-captioned matter, I requested a furlough again. On November 13, 1974 my Team, comprised of Mr. Fine, Mr. LeBlanc, and Mr. Spencer approved my furlough request. At this meeting Mr. LeBlanc and Mr. Spencer could see no reason for denying me a furlough as my "Special Case" designation had been expunged. This was the only face-to-face confrontation I ever had with institution officials following the expungement in my effort to get a furlough. After a furlough was approved by my Team, I told my wife that I had been approved, and she was very excited.

On November 15, however, the Advisory Committee, comprised of Mr. Edwards and Mr. Slodysko vetoed my Team's action and denied my furlough request. No reason was furnished at the time. I was not allowed to be present at their meeting. When I filed a request for administrative remedy with the Warden, I received a reply from Mr. Edwards, dated December 3, 1974, which stated: "The Advisory Committee reviewed your furlough request on November 15 1974 and it was denied. The Committee felt that the nature of the offense and involvement would attract undue attention or create unusual concern in the community. A furlough is a privilege and not a right. It may not be granted automatically because an applicant is technically eligible nor automatically as a reward for good behavior."

8. I do not know why the Bureau has continued to deny my furlough requests, nor does my family understand. After the special case designation was ordered expunged, I thought that there would be a chance of more favorable treatment. I have been afforded no hearing, nor have I been told the basis for my "notoriety." My co-defendant at my trial, Robert Fountain, also incarcerated at FCI, Danbury has been awarded furloughs; and I have not. I do not understand the basis for this discriminatory treatment, and I feel very bitter about it.

9. These events have had an adverse effect on my family's morale. My wife and children are nervous and depressed. They tell me: "Everyone can go home on furloughs, and you can't." My wife is so nervous that she cannot lose weight as required for her operation. My incarceration has also been very hard on my step-children.

10. Anything that could be done to send me home to my family, for even a brief period, would be deeply appreciated.

PAUL J. CARDAROPOLI

Sworn and subscribed to me

this day of February 1974.

NOTARY

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PAUL J. CARDAROPOLI, Petitioner -vs- JOHN J. NORTON, Warden, Federal Correctional Institution, Danbury, Connecticut, **Respondent.**	:	Civil No. B-74-86

STIPULATION OF DISMISSAL

It appearing that the above-named petitioner, PAUL J. CARDAROPOLI, was granted a five-day furlugh by respondent on March 21, 1975, and

It further appearing that controversy no longer exists among the parties as to the matters at issue in this litigation,

It is hereby stipulated by and among the parties, pursuant to Federal Rules of Civil Procedure 41(a)(1), that the above entitled action is dismissed.

Dated: April 7, 1975

Pierce H. O'Donnell
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Stephen Wizner
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United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT
141 CHURCH STREET
P. O. Box 1824
NEW HAVEN, CONNECTICUT 06508

April 23, 1975

Pierce O'Donnell, Esquire
Yale Legal Services
127 Wall Street
New Haven, Connecticut 06520

Re: Paul J. Cardaropoli v. John J. Norton, Warden, F.C.I., Danbury, Connecticut -Civil No. B-74-86

Dear Mr. O'Donnell:

This is to inform you, with regard to the above captioned case, that we cannot file the stipulation of dismissal which you have forwarded to this office.

The case you seek to dismiss, as you know, is on appeal. Although the furlough issue may be moot, we obviously are not of the opinion that the case should be dismissed.

Very truly yours,

Peter C. Dorsey
United States Attorney

By: Peter Mear
Assistant United States Attorney

PM:eco